

Supreme Court of the United States

OCTOBER TERM, 1970

No. 323

EDWARD H. COOLIDGE, JR.,

Petitioner,

vs.

THE STATE OF NEW HAMPSHIRE,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF NEW HAMPSHIRE

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CHRONOLOGICAL LIST OF IMPORTANT
DOCKET ENTRIES

1. Defendant Arrested February 19, 1964, and Manchester Municipal Court orders Probable Cause Hearing for March 4, 1964
2. Copy of First Decree Murder Indictment #3136
Dated: February 26, 1964
Entered: February 26, 1964
3. Copy of Felony (Kidnap) Murder Indictment #3137
Dated: February 26, 1964
Entered: February 26, 1964
4. Petition to Quash Search Warrants and Return Items Obtained without Search Warrants
Dated: July 22, 1964
Entered: July 23, 1964
5. Hearings on Petition to Quash in Hillsborough County Superior Court August 31 and September 1, 1964
6. Tentative Findings by the Court on Defendant's Petition to Quash Search Warrants, to Release Items of Property Seized, etc.
Entered: September 1, 1964
7. Composite of Findings by the Court on Defendant's Petition to Quash Search Warrants, to Release Items of Property Seized, etc.
Entered: October 13, 1964
8. Reserved Case is Filed with Hillsborough County Superior Court and Transferred to the New Hampshire Supreme Court without Rulings of Law. November 13, 1964
9. Opinion and Judgment of the New Hampshire Supreme Court March 11, 1965, at 106 N.H. 186, and Motion for Re-hearing denied, April 13, 1965
10. Trial Commences, Hillsborough County Superior Court, May 17, 1965

11. Verdicts of Guilty Returned June 22, 1965
12. Defendant's Post Trial Motions Denied. August 23, 1965, and September 2, 1965
13. Reserved Case is filed with Hillsborough County Superior Court September 30, 1965, and Transferred to the New Hampshire Supreme Court on October 6, 1965
14. Opinion and Judgment of the New Hampshire Supreme Court. June 30, 1969, at 109 N.H. 403
15. Defendant's Motion for Re-hearing
Dated: July 8, 1969
Entered: July 9, 1969
16. Motion for Re-hearing Denied and Opinion Modified. July 30, 1969
17. Application for Extension of Time in which to File Petition for a Writ of Certiorari
Dated: October 9, 1969
Entered: October 10, 1969
18. Extension of Time Granted on October 10, 1969, to and including November 26, 1969

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS

APRIL TERM 1965

No. 3136

No. 3137

THE STATE OF NEW HAMPSHIRE

v

EDWARD H. COOLIDGE, JR.

INDICTMENT #3136

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon their oath present that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, aforesaid, on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester in the County of Hillsborough, and State of New Hampshire, aforesaid, with force and arms feloniously, wilfully and of his deliberate and premeditated malice aforethought did kill and murder Pamela Mason in that he did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg 22-caliber rifle, Palomino model 400 S-L-Lr, and did discharge said rifle twice causing the projectiles from the cartridges therein to strike and wound said Pamela Mason in the head, and the said Edward H. Coolidge, Jr. did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason died, contrary to the form of the statute in such case

made and provided, and against the peace and dignity of the State.

INDICTMENT #3137

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon their oath present that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, aforesaid, on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester in the County of Hillsborough, and State of New Hampshire, aforesaid, with force and arms did feloniously and unlawfully seize, abduct, detain, conceal, take, lead, inveigle or carry away the person of Pamela Mason, a minor child of the age of fourteen (14) years, with the intent thereby to keep or conceal her from her parents, guardian, or legal custodian and in the course of perpetrating and committing said acts did feloniously, wilfully and of his deliberate and premeditated malice aforethought did kill and murder Pamela Mason in that he did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg 22-caliber rifle, Palomino model 400 S-L-Lr, and did discharge said rifle twice causing the projectiles from the cartridges therein to strike and wound said Pamela Mason in the head, and the said Edward H. Coolidge, Jr. did further make an assault upon the Person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason died, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

PETITION TO QUASH SEARCH WARRANTS, ETC.—

Filed July 23, 1964

NOW COME J. Murray Devine, Matthias J. Reynolds and John A. Graf, counsel for Edward H. Coolidge, Jr., and represent:

1. That prosecuting authorities have, in the name of the State, seized items of personal property of the defendant; that said items of personal property were taken from the person of the defendant, from the home of the defendant and from the motor vehicle of the defendant; that said items were searched for and seized without a search warrant; that said items are now in the possession of prosecuting authorities; and that said items were illegally seized in deprivation of the constitutional rights of the defendant.

WHEREFORE, your petitioners pray that all items of personal property of the defendant seized and retained as aforesaid be released to your petitioners forthwith; that all items of personal property of the defendant seized and retained as aforesaid be suppressed and quashed; that any and all evidence and information produced from, by or as a result of the items of personal property seized and retained as aforesaid be suppressed and quashed; and for such other and further relief as may be just.

2. That on February 19, 1964, four (4) search warrants, #7298A-D, were issued by a Justice of the Peace; that on February 20, 1964, items of property were seized pursuant thereto; that said items seized are now in the possession of prosecuting authorities; and that said four (4) search warrants, as enumerated above, were illegally issued and unlawfully obtained in deprivation of the constitutional rights of the defendant.

WHEREFORE, your petitioners pray that said four (4) search warrants, as enumerated above, be quashed; that all items of property seized pursuant to said four

(4) search warrants be released to your petitioners forthwith; that all items of property seized pursuant to said four (4) search warrants be suppressed and quashed; that any and all evidence and information produced from, by or as a result of the items of property seized pursuant to said four (4) search warrants be suppressed and quashed; and for such other and further relief as may be just.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.

APRIL TERM, 1964

State 3136

STATE

vs

EDWARD H. COOLIDGE, JR.

State 3137

STATE

vs

EDWARD H. COOLIDGE, JR.

State 3159

STATE

vs

EDWARD H. COOLIDGE, JR.

Hearing at Manchester in said County on the 31st day of August and 1st day of September, 1964, on petition to quash search warrants, to release items of property seized, et cetera (in 3136 and 3137), before Hon. Robert F. Griffith, Presiding Justice.

APPEARANCES:

For the State,

William Maynard, Attorney General
Alexander Kalinski, Asst. Attorney General
Emile R. Bussiere, Hillsborough County Atty.

For the Respondent,

J. Murray Devine, Esq.
Matthias J. Reynolds, Esq.
John A. Graf, Esq.

Stenographer,
Hermine T. Snyder.

[fol. 1]

TESTIMONY OF FRANCIS P. McGRANAHAN

Sworn by Mr. Devine; direct examination by Mr. Devine:

Q What is your full name?

A Francis P. McGranahan.

Q What is your position?

A Chief of Police of the City of Manchester.

Q* You have appeared at this hearing this morning in answer to a subpoena that was served on you?

A I have.

Q Did that subpoena ask you to bring the records of your department with reference to this case?

A Yes, it did.

Q Do you have the records with you?

A No, but they are available.

Q Are they in your possession or in the Attorney General's possession?

A They are at headquarters.

MR. DEVINE: We will need the records, Your Honor, but perhaps I can go on for a time with the Chief. Do you have the warrants, Your Honor?

THE COURT: I don't have them.

Q Before we get to the warrants with which we are concerned, can you tell us about normal procedure in the Manchester Police Department when search warrants are [fol. 2] wanted to search somebody's house or somebody's vehicle? Do they normally come to you first to get the warrant or get the complaint sworn to?

A Not necessarily. The captain or the deputy chief—however, if I am present or available they usually, let us say go to the superior officer.

Q And if you are present they come to you to sign the complaint?

A Yes.

Q Is that right, Chief?

A Yes.

Q Now, is a record made at the police station when a search warrant is asked for? That is, is there some record made on some of your dockets up there that a search

warrant is sought by a certain person, and a time when it is sought?

A There is a note generally left by the officer.

Q Where would that note be left? Would it be deposited with the record of that particular case?

A I don't know. I can't say for sure, Counselor, if that type of note would be included in the records of the case. It could or could not be.

Q Normally your procedure, however, would be to include such a note somewhere in the records of the case?

A I would say all records are contained somewhere in the files of the Manchester Police Department.

Q Under your normal procedure what would that note indicate with reference to the warrant?

[fol. 3] A It would be a note to the effect that on such a day and hour the officer, after securing a search warrant, proceeded to a certain house and searched the home.

Q Would a similar notation normally be made with reference to an arrest warrant?

A Yes. Yes, there would be a note in regard to an arrest.

Q Is another note made in these records after the warrant has been returned, executed by the officer to whom it was directed?

A Would there be a return made?

Q Yes.

A Not necessarily.

Q The only return which normally would be made would be on the warrant itself—the officer's inventory on the warrant itself?

A Yes. Now,—yes. I want to explain further. If the search warrant resulted in the arrest there would be a record—there would be a note of the results of the search.

Q No, on February 19th, Chief, four search warrants and an arrest warrant were issued in the case of Edward H. Coolidge, Jr. I believe you have seen these warrants, and I believe you signed as complainant on all of them. I show you a warrant which is marked 7298-A?

A Yes.

Q I ask if that is your signature at the bottom of that complaint?

[fol. 4] A Yes, it is.

Q Do your records indicate whether these search warrants—the four search warrants—were sought and received simultaneously with the arrest warrant, or whether they were sought and received prior to the arrest warrant? I don't believe the warrants themselves show that; but perhaps they would.

THE COURT: Perhaps the returns would indicate the time of day that they were executed, wouldn't they?

MR. MAYNARD: Are you asking what his records show as to the situation, Brother Devbine?

MR. DEVINE: Yes.

A If my record will show if these warrants were executed at one and the same time—all of them?

Q Yes.

A No.

Q Your records wouldn't show that?

A No.

Q Would the warrants themselves show that, Chief?

A I think this is the warrant I signed—the first—the original warrant that I had signed.

Q That is the one which has the suffix capital A?

THE COURT: Are you talking now about the search warrant or arrest warrant?

[fol. 5] WITNESS: This is the arrest warrant.

Q That is the arrest warrant?

A Yes, this is the arrest warrant.

Q These are search warrants, Chief. I think this appears to be the arrest warrant. This is marked 7298?

A Yes.

MR. DEVINE: Where is the original of this?

MR. BUSSIERE: That would be the original, filed with the Court, if it is the arrest warrant.

WITNESS: This is the arrest warrant.

Q So you believe that in this case you signed the arrest warrant first?

A Yes.

Q And then signed the search warrants? Is that right?

A As far as I can determine. Here is the first one I had looked at.

MR. MAYNARD: Again, Brother Devine, I can't tell from your question—are you asking what the records at the station show, or what his recollection of events is?

MR. DEVINE: I asked if his records would show when they were issued. He says no. Now I ask if he has any recollection as to when they were signed by himself, [fol. 6] acting as complainant.

WITNESS: I am not quite sure there would be a copy of these at the station.

Q Would the copies in the station indicate when they were issued with reference to each other? You state there is a date on the warrant, but there is no time stated?

THE COURT: I take it there is a date on all warrants?

MR. DEVINE: Yes; February 19, 1964.

MR. BUSSIÈRE: May I inquire what the total number of warrants which you have is?

MR. DEVINE: The four search warrants, which appear to be originals, and a certified copy which appears to be the arrest warrant. I was going to have them marked in a minute, so that we can keep track of them.

MR. BUSSIÈRE: Off the record—

(Discussion between counsel off the record)

Q Is there anything in those warrants, Chief, which would serve to refresh your recollection as to the order in which they were signed, or whether they were all signed, in fact, simultaneously?

A They were all signed the same day, but it is difficult for me to say at what time of day I signed them.

[fol. 6] Q But whatever time you signed them, did you sign them all together, as you recall it—the search warrants and the arrest warrant?

A I don't remember.

MR. DEVINE: If we may have these marked, Your Honor, so that we can keep track of them?

THE COURT: All right.

(Search warrants marked Defendant's Exhibits A, B, C, and D; arrest warrant marked Defendant's Exhibit E)

MR. DEVINE: You have no objection to their being marked?

MR. MAYNARD: No; they are a part of the case already.

Q Chief, referring now to the warrant which has been marked Defendant's Exhibit A, and which is 7298-A—

A Yes.

Q This appears to be a search warrant to search certain premises, a laundermat, at 712 Valley Street. Is that correct?

A Yes, that is correct.

Q And you signed it as complainant? Is that correct?

A Yes.

Q Attached to that by a staple is what appears to be a photocopy of a complaint or the body of a complaint. [fol. 7] Can you tell us who drafted the language in that complaint?

A The original language in this complaint?

Q Yes.

A It was drafted, to my knowledge, in the Attorney General's office.

Q At the time you signed this complaint was this photocopy of the body of the complaint attached to the complaint, or was that attached thereafter?

A It was attached to the complaint.

Q At the time you signed it, Chief?

A Yes.

Q And this list is also a photocopy which is stapled right below the body of the complaint, giving a list of items which supposedly were to be searched for. Do you know who made that list up?

A No, I do not—not for sure.

Q Was that also attached to the complaint at the time you signed it?

A To my knowledge it was, yes.

Q Now, your oath to this complaint was subscribed before whom?

A By Attorney William Maynard.

Q Was this complaint taken by you personally before the Attorney General for his subscription to your oath?

A Yes.

Q There appears to be another stapled list on the [fol. 8] search warrant side of this document, Chief, which would appear to be a duplicate of the one on the left hand side? Is that correct?

A I can't say definitely sure, but I assume that it is.

Q And when Mr. Maynard took your oath to the complaint, did he at the same time sign this search warrant as a Justice of the Peace?

A Yes, sir.

Q Is that true of all the other warrants as well?

A Yes, sir.

Q And he signed them all in your presence, did he, Chief?

A Yes, sir.

Q Do your records indicate at what time the Attorney General, Mr. Maynard, took charge of the investigation of this case?

A Yes. I would have to be—my memory would have to be refreshed on the day that we went to Concord. Acting on information, I went to the Attorney General's office sometime in the afternoon.

Q Was it before the Mason girl's body was discovered that Attorney General Maynard entered the case, or was it afterwards, Chief?

A It was after.

Q He was present on January 21st, 1964 at the scene where the girl's body was recovered?

A The Attorney General?

Q Yes.

[fol. 9] A I don't recall seeing him there.

Q Who has the record which indicates the date and the time when he actually took over supervision of the investigation of the case?

A Well, it is my understanding that the Attorney General automatically takes over the investigation of capital cases in the State of New Hampshire when he gets knowledge of the crime committed.

Q I think perhaps you misunderstood my question. Of course you are correct; the law requires the Attorney General to take over when there is a homicide or suspected homicide, but who in your department would have the

record showing the date and the time when the Attorney General actually took over the investigation of this case, or would there be such a record in your department?

A I would—I would say that the Attorney General entered into this case before the body was found; but definitely I know that the Attorney General's office did enter into this investigation prior to the finding of the body.

Q That is, the girl was supposedly missing from the evening of January 13th, 1964?

A Yes.

Q And as time went on, and before her body was found, you became somewhat apprehensive as to what happened to Pamela Mason?

A Yes. We were in fact greatly disturbed from the [fol. 10] first day the child was missing.

Q And her body was not actually found until January 21st? Is that correct?

A I believe that is the date it was found.

Q So sometime between those two dates—January 13th when she disappeared and January 21st when the body was found—you reported to the Attorney General's office and—

A Yes, and I requested the assistance of the Attorney General's office.

Q But you do not recall the exact date?

A No. I am sorry.

Q But at any rate, there is no doubt that once the Attorney General came into the case, he was in complete charge of the investigation of the case, and at all times thereafter?

A Yes, sir.

Q Did you assign any particular officer under your command to work with the Attorney General, and head up your forces, so to speak?

A Yes. Captain John Stipps.

Q So that after the Attorney General came in, and maybe even before that, Captain John Stipps had been in charge of the Mason case?

A Yes.

Q How long after her disappearance was Captain Stipps assigned to this case, if you remember?

[fol. 11] A I know that Captain Stipps was immediately assigned to shape up the investigation of the girl's disappearance, possibly the day after the child disappeared.

Q This would be somewhere around January 14th or 15th?

A Around January 14th or 15th, yes.

Q Would your records indicate, Chief, when Mr. Coolidge was first questioned by any of your officers with respect to this case?

A I wouldn't know.

Q Is it normal when someone is questioned to have a notation made by the officer who questioned him in the records of the case?

MR. MAYNARD: I object, and I don't believe this is material to the inquiry here. It looks to me as though he is now delving into other matters.

MR. DEVINE: It may have a bearing on what we claim is illegal detention later. The State has a certain time to hold a person for questioning.

THE COURT: May I have the question?

(Question read)

THE COURT: Do you mean at the time during which the questioning is conducted?

MR. DEVINE: The date and time, Your Honor.

[fol. 12] THE COURT: He may answer.

Q Can you answer, Chief?

A I would like to have the question again, if you don't mind. You were asking me when the superior officer questions a suspect or a respondent if there is a note made of it?

Q Yes.

A Yes, there is a note made of it.

Q So that somewhere in your records in the police department there would be a notation concerning whatever date or time Mr. Coolidge was questioned about the Mason case? Is that correct?

A Yes, sir.

Q Let me ask you something further about your records. Is it usual when a man is brought in to the station—say for questioning—to make a note of the time that he is brought in?

A Yes. Yes.

Q Do you know if such a note was made with respect to Mr. Coolidge when he was brought in on Sunday, February 19th, 1964?

A I can't answer that question.

Q Excuse me. February 2nd, not February 19th. Would it be normal to have such a note made if he was brought in for questioning, as to the time he arrived?

A On February 2?

Q Yes; February 2, 1964.

[fol. 13] A I would say yes.

Q Now, when a man has been questioned, and let us say is actually put under arrest, is a notation made in the station record at that time made, showing that he was arrested for a certain crime, and the time put down on that?

A If a person is held for an arrest it is put on the daily blotter—the time of day and date and the name of the arresting officer.

Q Who under your command would have custody of the record which would show at what time on February 2, 1964 Mr. Coolidge came in for questioning, and what time on that day he was placed under arrest for larceny from Cote Brothers?

A I think—well, I am quite sure that Inspector Thomas Bolcock would have the records. However, I think that that particular record would be under the care of Captain Stipps and Lieutenant John Curran.

Q In other words, as far as Mr. Coolidge and the Mason case go, all of those records have been gathered in one place, under the custody of either Captain Stipps or Lieutenant Curran?

A Yes.

Q And there are no independent records at the police station, as such, connected with Mr. Coolidge or with this case, in the station, except in the custody of these two officers? Is that correct?

A There could be records or parts of records in an-
[fol. 14] other department at police headquarters—in our
general records.

Q It is possible that there might be some duplication
of the records in one place or another?

A Yes.

Q But would your independent records have a nota-
tion such as I have asked about—as to the time when he
came in for questioning and the time of his arrest?
Would you have that information other than in the cus-
tody of Captain Stipps and Lieutenant Curran?

A No. Whatever records would be in any other sec-
tion of the department would also be in the official rec-
ords of the case.

THE COURT: Do I understand, Chief, that the body
was discovered February 21st? Can you tell me that?

WITNESS: No. I don't have any notes with me.

MR. BUSSIÈRE: I believe it was discovered January
21st, Your Honor.

WITNESS: Yes; January 21st. I think it was either
seven or eight days after she disappeared.

MR. DEVINE: I would like to have the time he was
brought to the station for questioning on February 19th
[fol. 15] and the time he was arrested; also the time Mr.
Coolidge was brought in on February 2nd, because we
may want to question the chief or other officers about it.

THE COURT: Gentlemen?

MR. BUSSIÈRE: Well, Your Honor, the State will
represent that there is no record that would indicate the
exact time that the search warrants were issued on Feb-
ruary 19th other than the warrants themselves show.

THE COURT: And no one has any recollection
whether those warrants were issued either before or after
the arrest warrant?

MR. BUSSIÈRE: The State's representation would be
that they were all issued at the same time.

THE COURT: All simultaneously?

MR. BUSSIÈRE: All simultaneously.

THE COURT: What about the other records he has
asked about?

MR. BUSSIERE: Before we get to that, Your Honor, for the record we would like to indicate for the record that there was a fifth search warrant issued, with no return.

THE COURT: I have seen that. That was issued on February 21st.

[fol. 16] MR. BUSSIERE: My previous statement is amended to that extent. So far as the record of the arrest of Mr. Coolidge and the charge of larceny, if the Court will give me a few seconds I may be able to say something about that.

MR. DEVINE: You may sit down, Chief.

THE COURT: Yes.

(Conference between counsel off the record)

MR. BUSSIERE: Your Honor please, we will have available after lunch a report indicating—which will come from the police records—the time that Mr. Coolidge was booked for the crime of grand larceny on February 2nd or 3rd. Now, this particular report is what is known as an arrest form, and will disclose the name of the defendant, the nature of the offense, and the information relative to that offense, and the time that he was booked for that offense.

THE COURT: Will you also have the other thing he asked for—the time he was questioned, the time he was in the station when he was questioned prior to the arrest?

MR. BUSSIERE: What the State is willing to do [fol. 17] with respect to that is to make available the witness who made the notation.

THE COURT: The Chief indicates that there is a record at the station showing the time.

MR. BUSSIERE: To my knowledge, that would be in the general report form, which is privileged at this point.

THE COURT: There isn't just a report of the time of the questioning?

MR. BUSSIERE: If there is, I will produce it. I understand we will be able to get from the officer that he was brought in at such and such a time, and we can go on from there.

MR. DEVINE: We say we are entitled to examine the original records, but that the Court should examine them before we do. This is the original record; not some record made by the Attorney General's office. We say that we are entitled to examine them after the Court has examined them. If they will be here after lunch, I have no further questions of the Chief at this time.

THE COURT: Do you expect to have the Chief here after lunch?

[fol. 18] MR. BUSSIERE: No, Your Honor.

THE COURT: How about you?

MR. DEVINE: No; I don't believe we will need the Chief this afternoon, Your Honor.

THE COURT: We will stop here until two o'clock.

(Recess 12:30 to 2:00 p.m.)

(Arraignment on State 3159 and State 3179, before proceeding with hearing)

MR. DEVINE: Your Honor, may we proceed on the items we were on this morning?

THE COURT: Yes. I believe the State was going to have some information for you.

MR. DEVINE: Yes, Your Honor,—some records.

MR. BUSSIERE: Your Honor please, I have the arrest report, wherein the defendant was charged with the crime of grand larceny on February 3, 1964. The rear of the form contains a brief summary of some of the evidence in the case.

THE COURT: I believe probably the back part came in through or as a result of—as a work product,—the work of officers, a report of their investigation. The front [fol. 19] of the arrest report indicates the date and time of his arrest as 2-3-64—2-3-64, at 2:30 a.m.

MR. BUSSIERE: If it please the Court, this is a photostatic copy of what the Court has, and it can be separated—the rear from the front part of it.

THE COURT: Do you wish to see the front part of it? Do you object to his seeing the front part of it?

MR. BUSSIERE: No, Your Honor.

MR. DEVINE: The only comment I have is that on the part which gives the time of arrest it apparently doesn't give the time that he was brought in for questioning. I would like to ask the Attorney General if there is any record of it on the blotter.

MR. MAYNARD: I think the time is the same; the time detained and the time arrested is the same.

THE COURT: No; that is not so. Quite obviously from the back of the sheet it is not so.

MR. BUSSIERE: Until such time as the man was under arrest, the evidence would be that he was not under arrest.

[fol. 20] THE COURT: But he wants to know at what time he was brought to the station.

MR. BUSSIERE: The evidence will indicate that he voluntarily came to the station.

THE COURT: There is nothing in here to indicate that.

MR. BUSSIERE: No, there is not, but there will be evidence, Your Honor.

THE COURT: As I understand from Chief McGranahan's testimony, when a man comes in for questioning there is some record of the time he comes into the station for questioning.

MR. DEVINE: Your Honor please, this only indicates that he was not arrested until February 3rd at 2:30 in the morning. Our information is that he was in the custody of the police from one o'clock on February 2nd the day preceding.

MR. BUSSIERE: His information is partly correct and partly incorrect. His information that the man came to the station at a particular hour, give or take a few minutes, may be correct; but his information that the man was detained is not correct.

THE COURT: Well, is it your position that he could [fol. 21] have left the station at any time up to 2:30 in the morning?

MR. BUSSIERE: That is correct.

THE COURT: But you say he arrived there at 1:30 the previous day?

MR. BUSSIERE: At the request of the police, he came in voluntarily.

MR. DEVINE: There may be some question about that request.

THE COURT: I assume he was requested by the police to come in for some purpose?

MR. BUSSIERE: That is correct.

THE COURT: Did they call him in or give him some paper?

MR. BUSSIERE: There was some previous talk with the man, with the understanding that he would come in later. On the morning of February 2nd there was a telephone call made to him, asking if he would be available on this day; and those were the circumstances under which he came to the station.

THE COURT: Do you mean he drove to the station?

MR. BUSSIERE: He drove down to the station by himself.

[fol. 22] MR. DEVINE: I would like to call for the first sheet of the arrest report, Your Honor please.

THE COURT: Yes; it may be marked.

MR. DEVINE: Would you mark please the photostatic copy of the arrest report as Defendant's Exhibit F?

(Copy of report marked Defendant's Exhibit F)

MR. DEVINE: We propose now, Your Honor, to go into some of the items taken without warrants, to clear away some of the underbrush. I would like first to offer the deed of the Coolidge house—that is, the premises where things were taken without a warrant.

MR. BUSSIERE: We have no objection to that if the Court thinks it is material.

MR. DEVINE: I think that ownership of the premises may be material.

THE COURT: Will you stipulate that they were owned by the defendant?

MR. BUSSIERE: Yes, if they want such a stipulation. He was married—if they want such a stipulation, we will agree.

THE COURT: It is stipulated that the premises at 312 Seames Drive were in the name of Edward H. Cool-

[fol. 23] idge, Jr., and that Edward H. Coolidge, Jr. was in the month of February, 1964, married to Joanne Coolidge, and she was living in that house with him. This indicates that the property was purchased by Mr. Coolidge on December 17th, 1960.

MR. DEVINE: Also, Your Honor please, the Court will recall that after recent hearings the Court ordered the State to furnish the defense with a list of items which were taken without a warrant and which were in the State's possession. In response to the Court's order, Brother Graf received a letter from Brother Kalinski, Assistant Attorney General, under date of July 24th, containing such a list. We would like to offer that letter at this time and make it a part of the record.

THE COURT: I take it there is no objection. That may be marked.

(Letter giving list of items taken marked Defendant's Exhibit G)

THE COURT: I assume that the prosecution will indicate that they have no other things in their possession, other than the things listed in the search warrants and [fol. 24] on this letter of July 15th, was it?

MR. BUSSIÈRE: Except, Your Honor, for items of microscopic or of no apparent value. It is my understanding when we made up the list we were to give a list of the items of property of the defendant, but I did not understand that we have at any time been required to list the microscopic, or perhaps a better term would be items of no value—no evidentiary value.

MR. DEVINE: This is not my understanding. I would like to read from the transcript. The Court said, "In any event I will order the State to furnish you with a list of his personal possessions, including any taken from his person, house or car." This is not as limited as my brother is now intending to limit it.

MR. BUSSIÈRE: As something quite well known to the defendant and to his attorney, there was a request made of Mr. Coolidge for specimens from his head and from his body, which were given to the police at such request voluntarily, complying with the request. I do not consider that hairs, for instance, are property. We ex-

[fol. 25] cepted those items, or items of a similar sort, from the list which has been supplied.

MR. DEVINE: We are not making any complaint about the hair, but do I understand that this, with the exception of the hair, is a complete list?

MR. BUSSIERE: Yes; of items taken from his body, yes.

MR. DEVINE: All other items are here listed?

MR. BUSSIERE: All others items are listed under "general description", yes.

MR. DEVINE: May we have a short recess, Your Honor, to examine this latest exhibit on the time of arrest?

THE COURT: Let me know when you are ready.

(Recess 2:30 to 2:40 p.m.)

MR. BUSSIERE: Your Honor please, I want to clarify one last remark which was made on the record, I believe. I said with reference to the items which were described in the warrant that the return shows in a general description the items taken. One of those is vacuum [fol. 26] sweepings. Under that category, so that later on no one will say that we were misleading the defense—under that category there are some twenty-two calibre bullets which were in fact picked up by a vacuum cleaning. I am speaking now about items which were seized by warrant.

THE COURT: Those are described in the warrant returns. He says they are described as vacuum sweepings, but they are in fact bullets.

MR. REYNOLDS: Inspector Glennon.

TESTIMONY OF DONALD F. GLENNON

Sworn by Mr. Reynolds; direct examination by Mr. Reynolds:

Q Would you tell us your name, please?

A Donald Francis Glennon.

Q You are with the Manchester Police Department?

A Yes, I am.

Q And your rank?

A Inspector.

Q How long have you been an inspector?

A I was promoted in January, sir.

Q In January—

A Of this year.

Q All right. Since the first of the year have you been [fol. 27] in any special section of the police department?

A Well, I have worked on the school patrol; and when the schools closed I went to the detective division.

Q Referring to the Pamela Mason case, at some time were you assigned to work on that case?

A Yes, sir.

Q Who assigned you?

A Captain Stipps.

Q Were you assigned to work under Captain Stipps?

A Yes, sir. I might say Deputy Houle assigned me to Captain Stipps.

Q Captain Stipps was in charge, as far as the Manchester Police Department was concerned with the investigation?

A Yes, sir.

Q You and other gentlemen worked under him?

A Yes.

Q You took your orders from him and made your reports to him?

A Yes, sir.

Q When did you first start working on the Mason case?

A It was early—the latter part of January. I am not sure of the exact date.

Q The Mason girl's body was found, I believe, on January 21st. Would it have been before then or after?

A I think I worked with them after the body was found.

Q That would have been shortly after?

[fol. 28] A Shortly after, yes, sir.

Q Prior to January 21st did you know Mrs. Edward Coolidge, Jr.?

A Did I know her?

Q Yes, sir.

A No, sir.

Q When was the first time you talked with Mrs. Coolidge, Jr. or with Edward Coolidge?

A It was on February 2nd, to the best of my knowledge.

Q And that was a Sunday?

A Yes, sir.

Q Can you tell us the circumstances as to how you happened to speak to him or to Mrs. Coolidge?

A Which would you prefer first—the man or the wife?

Q Sorry. Which would you prefer first—the husband or the wife? Which happened first?

A The husband, Edward. We were called to the station, told that there was a party there to see us. I was working with Officer LeClair at the time. This was about quarter of one in the afternoon. We got there, and Mr. Coolidge—actually it was Officer LeClair that he wanted to see. Officer LeClair went in and talked with him and I remained in the outer office, and then shortly after that I went in and talked with him myself.

Q I want to get the sequence. Were you on duty that morning?

A That day, yes.

[fol. 29] Q What time did you go on duty?

A Our actual reporting time was eight o'clock in the morning.

Q Did you or Officer LeClair telephone the Coolidge house that morning?

A I did not.

Q You didn't?

A No, I did not.

Q It is your understanding that he reported to be questioned on the Pamela Mason case?

A Yes.

Q And was to take a lie detecting test?

A Yes.

Q And you and Officer LeClair were to take charge of the questioning of Edward Coolidge?

A Yes, sir.

Q At quarter of one when you got there with Officer LeClair, he was already at the station?

A Yes, sir.

Q Now, when did you first speak with Mrs. Coolidge?

A Approximately ten-thirty that night.

Q Where was that that you spoke to her?

A At her home.

Q So that from one o'clock until ten-thirty you didn't see or speak with Mrs. Coolidge?

A Yes. I won't say I didn't see her, but I didn't [fol. 30] speak with her. I saw her, yes.

Q Where did you see her?

A She came to the station.

Q Do you have an idea what time that was?

A It would be in the vicinity of two-thirty or three o'clock in the afternoon.

Q Do you happen to recall seeing her leave the station?

A It was shortly after. I didn't make any point of noticing, no.

Q At this time many people were being called in for questioning and were taking lie detector tests? Is that so?

A I believe that is so.

Q Had you been ordered to give him a lie detector test that Sunday?

A Not ordered, no.

Q It was your own decision?

A Not mine, no.

Q Whose decision was it?

A I don't know as I exactly understood. He was coming in on his own to do this.

Q All right. Was LeClair questioning him from quarter of one, or one, for some time?

A He was in there some time.

Q But there would be just yourself, Officer LeClair and Edward Coolidge?

[fol. 31] A Yes.

Q Then at some time you started questioning him?

A You say "questioning". It wasn't a questioning period at that time.

Q What was it about?

A We wanted him to go to Concord to take a polygraph test.

Q A lie detector test?

A Yes.

Q Was the discussion whether he would or wouldn't take the test?

A That is right.

Q At some time he did take the test?

A Yes.

Q At what time did you persuade him to take the test?

A This would be from three-forty-five to four o'clock.

Q Surely, Officer, there were many events during this day. At some point did you write up the events of that day as you saw and observed them?

A Up to that point.

Q The events of that day?

A Yes; I have a report on that day covering Edward Coolidge. Yes.

Q At that time you made note of the times things took place, and so forth, and the sequence of events?

A Whether or not the time is on there, I don't know. I believe it is, but I am not positive.

[fol. 32] Q But at any rate your report ended up going into Captain Stipps' possession?

A Yes, sir.

Q Now, as I understand it, from about one o'clock until quarter of four—was it?

A Approximately.

Q The discussions as to the lie detector tests went on?

A Yes.

Q Were there any discussions as to his particular involvement in the case, as to his being a suspect?

A As to his being a suspect?

Q Yes.

A What we wanted to do was get him to go up and take the test to see if he was involved, yes, in the Mason girl case.

Q Was it you and Officer LeClair who had the idea that he should take the lie detector test?

A Yes, sir.

Q Can you tell me what happened next?

A He agreed, and we took him to Concord.

Q The three of you went up to Concord?

A Yes, sir.

Q Where did you go in Concord?

A We went to the new Motor Vehicle Building, of the State buildings—the state police division.

Q Who did you see there?

[fol. 33] A Detective Sergeant McBain.

Q You asked Detective Sergeant McBain to give Edward Coolidge a lie detector test?

A Officer LeClair did.

Q Were you present through this test?

A Not through the full of it, no. We watched a portion of it, but we were downstairs in the cafeteria.

Q How long was he upstairs with Detective Sergeant McBain on this test?

A Over an hour. Perhaps an hour to an hour and a half.

Q It took about half an hour for you to get to Concord?

A About half an hour, yes.

Q When the test was over, what time would you say it was?

A In the vicinity of six-fifteen, give or take.

Q At that time did Sergeant McBain report to you anything about the developments in that test?

A Not to me.

Q Or in your presence?

A No. He called Officer LeClair aside and talked with him.

Q Not in your presence?

A No; they went in another room, and I was with Mr. Coolidge.

Q Neither of you heard what was said?

A Neither me or Mr. Coolidge, no.

Q Then you got back in the car and came back to Manchester?

A Yes, sir.

[fol. 34] Q That was at what time?

A I would say roughly, seven o'clock we were home—seven or seven-fifteen.

Q And by "home" you mean?

A In Manchester.

Q In the course of the ride back to Manchester, did Officer LeClair tell you anything about the developments—particularly the Cote larceny, so-called?

A No, he did not. As a matter of fact, Mr. Coolidge and I, while we were talking at the State Building—he started talking about something, and I told him right then and there that anything he might say would be used for or against him—anything he might say to me. Then coming home in the cruiser, the police department vehicle, I asked him one question. He said, "Would this be held against me or used in court against me?" I said, "Yes", and he said no more.

Q Maybe we should stop here for a second. Is it fair to say that until seven o'clock when you got back to Manchester, you had no idea Edward Coolidge was involved with the Cote larceny case; it was all involved with the Pamela Mason case?

A There was talk in the State Building with me, by Mr. Coolidge, about the larceny of a sum of money. He didn't say it was Cote. He said he had admitted to something.

Q To—

A Mr. McBain, apparently.

[fol. 35] Q In the course of the lie detector test?

A I don't know.

Q At some time did you check with Inspector McBain?

A No, I didn't.

Q You were not concerned with the larceny charge at all?

A Primarily, no.

Q Will you tell us what happened when you got back to the station around seven o'clock, as I understand.

A Then we just started talking with Mr. Coolidge.

Q About—?

A About the Mason case.

Q And "we" means you and—

A Officer LeClair.

Q Where were you talking with him?

A Upstairs; what you might call the third floor.

Q The third floor. How long did you talk with him? Was there a break for dinner?

A Well, it wasn't constant talking. We would talk with him. He would say something. We would verify it, and leave him alone. It was off and on.

Q Again the talk was all about the Pamela Mason case?

A Yes, sir.

Q There wasn't any talk about any unsolved Cote larceny?

A No.

Q How long did you keep on talking with him? Until when?

[fol. 36] A Well, at two o'clock we figured we had what we were looking for; at least it satisfied us at the time. This would be about two o'clock in the morning. Then we started talking with him about the Cote larceny.

Q This was an unsolved theft of some three hundred dollars from Cote Brothers Bakery?

A No one had been apprehended for it.

Q The reason you knew about it was because apparently it came out in the course of the Concord visit? Is that right?

A I would say yes.

Q Up until two o'clock you paid no attention to that?

A No, sir. Only minutely in Concord or on the way back, but only very minutely.

Q Then, Officer, you arrested him at two-thirty a.m.?

A That is the time he was booked. That is the procedure down at the lieutenant's or the captain's desk when he is actually charged with the crime.

Q Is that when he was arrested?

A You might say he was arrested at two o'clock, when we started to talk with him—

Q Maybe I am confused.

A With myself, if it was Mr. Coolidge in the ordinary circumstances, I would have him booked for—possibly investigation; then talk with him and then he would be booked for the charge. There would be a time element of [fol. 37] the actual arrest and the actual booking on the charge.

Q Is it fair to say up to two-thirty he was not under arrest?

A As far as I can say, it was two o'clock, though it was in the papers he was going to be charged.

Q All right. At two o'clock he is charged with the crime, and two-thirty you did what?

A Actually booked him. That is the final—

Q Tell us what "booking" means?

A Booking is the actual appearance before the lieutenant and captain in charge. He is asked his name, date of birth, his address, where he was born. Then we, as the arresting officers,—I notify the man in charge that he was arrested from a certain spot and is to be charged with a certain crime.

Q Who, by the way, was the commanding officer?

A That would be Lieutenant Engelhart.

Q At that time, around two o'clock, you went down to see Lieutent Engelhart and said you wanted to charge him with the Cote larceny?

A No. At two-thirty we went down to the lieutenant.

Q Then you put him in a cell, from then on?

A Well, he is allowed to arrange bail for himself.

Q What do you know about bail being set?

A Bail was set at one thousand dollars.

Q Do you call a bail commissioner at two-thirty in the morning?

A If he has the money or requests to be released, we [fol. 38] call the commissioner—rather, the houseman has to do that duty. He calls the bail commissioner, and he puts up the collateral or cash—he puts up the money and is released.

Q Would the commissioner come down there?

A At two-thirty in the morning he could have been released.

Q Did the bail commissioner come down there?

A No; we call him on the 'phone and tell him the charge, and he sets the amount of bail.

Q But he doesn't come down there?

A Not unless he is notified that the party has the cash or collateral.

Q Is this bail and all that recorded on another sheet?

A The booking sheet has a place on the side—at the top of the booking sheet—it has various captions, and one of them, on top, is "Bail".

Q On this one do you know that bail was set, at two-thirty in the morning, at one thousand dollars?

A Yes.

Q Was Edward Coolidge allowed to make a 'phone call?

A He is entitled to, yes.

Q Did you see him do it?

A I didn't see him arrange for bail, no.

Q Did he make any 'phone calls?

A I don't know whether or not he made any 'phone calls relative to bail.

[fol. 39] Q Did he make any 'phone calls?

A Yes, he made 'phone calls; but relative to this, I don't know.

Q Assuming the bail commissioner sets bail at one thousand dollars. You tell the person under arrest?

A Yes.

Q Do you then tell the person, "You can make a 'phone call to arrange bail", that night?

A I think he knew that the bail was set at one thousand dollars, but due to the hour he didn't call anyone. He didn't make any attempt, I don't believe, to bail himself out.

Q After you booked him did you continue to question him?

A No; he was turned over to a houseman and put in a cell.

Q Then I hope you went home to bed?

A No, I didn't.

Q Were you still in the station for some time?

A Not immediately.

Q Did you type up a report?

A Yes, I typed up a report on the back of that sheet, because he was due in court in the morning.

Q Now, in addition to going up to Concord, that Sunday evening you went to Edward Coolidge's house?

A Yes.

Q You say that was when you saw Mrs. Coolidge?

A Yes.

[fol. 40] Q And it was around ten-thirty?

A Yes.

Q Was this something you and Officer LeClair decided to do, or were you told to do it, or what?

A We decided to do it.

Q You decided to do it?

A On our own.

Q And the purpose of going over there was—?

A To talk about the Mason case.

Q To talk about the Mason case with Mrs. Coolidge?

A As it was involving her husband.

Q And what she knew about the Mason case?

A That is right.

Q You decided to go over there on your own?

A Personally, or with another subject.

Q You and Officer LeClair made the decision to go over there?

A It was Detective Sergeant McBain and myself who went to the home.

Q So Officer LeClair didn't go with you?

A No, he didn't go with us.

Q So you made the decision to go to her home about ten-thirty?

A Yes.

Q You were in her home how long?

A Approximately three-quarters of an hour.

Q Was she alone?

[fol. 41] A When we arrived, no. Her mother-in-law was there.

Q And that would be—?

A Edward Coolidge's mother.

Q Did she leave?

A Shortly after.

Q Shortly after you arrived?

A Yes.

Q Did you ask her to leave?

A No, we didn't ask her to leave.

Q Did Detective Sergeant McBain ask her to leave?

A No; he didn't ask her to leave, no.

Q Tell us the circumstances.

A We wanted to talk with Mrs. Coolidge, the wife of the subject, alone. We didn't know as Mrs. Coolidge should be there or not. We felt that we wanted to talk with her alone. We started to talk with her, and then Mrs. Coolidge suggested leaving. After that we asked one or two questions.

Q It was indicated that you preferred to talk with her alone?

A Yes.

Q Then Mrs. Coolidge, Sr. left?

A Yes.

Q Did she leave alone?

A She made a 'phone call. No. She asked some member of her family to pick her up.

Q Then you stayed with Mrs. Coolidge how long?

[fol. 42] A Mrs. Coolidge, the mother, was there perhaps five to ten minutes, and then the remainder of the time—like I said, we were there about forty-five minutes; so it would be thirty to forty minutes.

Q I suppose Mrs. Coolidge at this point was wondering where her husband was?

A No. She knew where he was.

Q I mean why he wasn't home. I suppose you told her you were still busy with him at the station?

A Yes, I believe we did tell her that—that he was still in the station.

Q By the way, do you know if after you left other people were questioning him?

A No, I don't know that.

THE COURT: What time was this?

WITNESS: This was ten-thirty, when we arrived at the home of Mrs. Coolidge.

Q This was on lie detector Sunday?

A The 2nd of February.

Q Did you tell Mrs. Coolidge why he was at the station, and whether or not he would be home?

A Well, I don't know. She understood this prior to our coming there.

Q I am sure she knew that he was at the station.

A Relative to the Mason case.

[fol. 43] Q You said he was still at the station being questioned about the Mason case and you didn't know when he would be home?

A I don't recall as to the words that were used. She understood that he was there. There was no question where he was. I am inquiring whether or not you told Mrs. Coolidge the circumstances of why he was at the station and whether or not he would be home or not?

A I believe she asked if he would be home that night. I think we said, "Possibly not", "We didn't know", "Possibly, yes, but we didn't know."

Q When you said "Possibly not", did you have in mind arresting him for the Mason case, or did you have in mind arresting him for the Cote larceny which came to light up in Concord; or was it both?

A Not being satisfied—there was some doubt about some sum of money. Due to that, I didn't know. On the Mason case we were not satisfied with his story and therefore the answer to Mrs. Coolidge.

Q My question is when you told her he wouldn't be home that evening, did you have in mind arresting him for the larceny case or did you have in mind arresting him for the Mason case?

A I don't know that we had the idea that we were going to arrest him at all.

Q You just had in mind keeping him all night in the station? That is what you had in mind?

[fol. 44] A Well, not necessarily.

Q Well, Inspector, what did you talk about there?

A We talked about what he had told us relative to his activities, and asked her to corroborate or deny.

Q At certain times and dates?

A At certain times and dates.

Q And all that had to do with the Pamela Mason case?

A Yes, sir.

Q You or Detective Sergeant McBain took notes as to what the conversations were?

A I didn't. No, sir.

Q You left there around eleven-thirty?

A Eleven-fifteen, possible, or eleven-thirty.

Q On the way out did you stop at the garage?

A They haven't a garage.

Q Did you look in any cars?

A Yes, we looked in both cars. They had two cars.

Q There was a 1963 Chevrolet convertible?

A Yes.

Q And a Pontiac car?

A Yes.

Q You went out on the street and looked at them?

A Yes.

Q Was Mrs. Coolidge with you?

A No; she was in the home.

[fol. 45] Q When you were in the home, you asked her questions about Ed's possessions—clothes he wore, weapons he might own?

A Yes.

Q The pants he might have been wearing on the night of January 13th?

A Yes, sir.

Q Were these pants shown to you?

A Yes, sir.

Q Where was that?

A In the home.

Q In the house?

A Yes.

Q In the living room or the kitchen?

A In the bedroom, I believe it was. Yes, sir.

Q At that time were any weapons shown to you?

A Yes, sir.

Q What else? Meaning what else was shown to you or did you see that evening?

A That is about the substance of what we were shown—his clothes, the guns. I can't think of anything else that was shown to us.

Q By the way, do you happen to know that Captain Stipps had talked with Mrs. Coolidge that afternoon in the station by the time you went to the house?

A I am not aware of the fact.

[fol. 46] Q You didn't see Ed Coolidge and ask his permission to go to his house that evening?

A Do you mean did I see him and did I make it a point to ask him?

Q Yes.

A No, I don't believe I did.

Q I am curious. If you wanted to talk with Mrs. Coolidge, why you didn't call her and ask her to come to the station or say you would see her the next morning.

A There was no pressing need for her to come to the station, she being a woman and having a child. We had a car and we went to the home.

Q As a convenience to her?

A Yes.

Q I mean there was nothing pressing; you were not afraid that she would run away, or anything like that?

A No, no.

Q If there was nothing pressing, couldn't you have asked her to come down the next morning?

A Well, we were working on the case, and the time element couldn't be interrupted; it more or less followed in sequence, and Mrs. Coolidge followed in.

Q If the time sequence ended at about three o'clock in the morning, would you have gone to the house then?

A Well, possibly we would have, due to the urgency of it.

[fol. 47] Q But he wasn't arrested for the Pamela Mason case until three weeks later—February 19th? Isn't that so?

A Yes.

Q And this was on February 3rd?

A Yes.

Q Did you see the child?

A No. I believe the child was in bed.

Q Do you know how old the defendant's wife is?

A No, I don't know how old she is—not offhand. She is a young girl—younger than I am—and in her twenties, I believe. I really have no idea.

Q Where did you have this discussion with her?

A In the living room. She asked us to sit. She made coffee for us. She made a pot of coffee.

Q You were in plain clothes?

A In plain clothes, yes, sir.

Q So I understand that at ten-thirty you knocked on the door, she invited you in, her mother was there,—

A Mother-in-law.

Q Her mother in law, you made it clear that you would prefer to discuss this matter with her alone; the mother-in-law went home—somebody came and picked her up, and then you discussed the case?

A Yes, sir.

Q You asked to see the pants, or something like that, [fol. 48] and you were shown some clothes and weapons, and that was about it?

A That is the substance of it.

Q And when you left at eleven-thirty that evening you took some items with you?

A That is right.

Q What items did you take with you?

A You want me to read this?

Q If it refreshes your recollection, you may read it. I can make it easier. This appears to be a receipt?

A That it what it is.

Q It is signed "Inspector D. Glennon, Manchester, P.D." Is that your signature?

A Yes; it is my handwriting in full.

Q Now will you tell the Court what you took that evening?

A One Palimino model 400 twenty-two—do you want the full or the abbreviations?

THE COURT: Couldn't you just ask if he took all that are listed there?

Q This list is one Palimino model 400 SSR rifle?

A Yes.

Q You took that?

A We were given it.

Q This is what?

A One sixteen guage Remmington shotgun.

[fol. 49] Q Without going into all the details this is a Marlin—is that a shotgun?

A No. That would be a thirty-thirty rifle.

Q And this?

A One 410 guage shotgun.

Q Mossberg & son?

A Yes.

Q Red jacket?

A Yes; one red jacket.

Q One pair uniform trousers?

A Yes.

Q What does this say?

A I have received the above items from Joanne Coolidge for examination."

Q And you gave her this prior to your leaving there at approximately eleven-thirty?

A Yes. Somewhere around there.

MR. REYNOLDS: I would like to have this marked as an exhibit.

(Receipt given Mrs. Coolidge marked Defendant's Exhibit H)

Q Inspector, on the night of February 2nd did you or did Detective Sergeant McBain take any items from the house or from the cars? By "items" I mean anything—scrapings or anything other than is on this Exhibit H?

[fol. 50] A From the house or cars?

Q Any place at all around the property, including his cars.

A Yes. We took from his car two items, I believe—one was a box of twenty-two shot, calibre ammunition, and one pair of trousers from the trunk of the car.

Q Could you tell me which car?

A The Pontiac.

Q Both came from the Pontiac?

A Yes.

Q Trunk?

A No; the ammunition was found in the glove compartment and the trousers were found in the trunk of the Pontiac.

A At eleven-thirty you said "Good-bye" to Mrs. Coolidge and went out to the cars?

A After asking her permission to do so.

Q You went to the cars?

A Yes.

Q Did you go back to the house?

A I believe Detective Sergeant McBain did. I didn't.

Q You didn't add these things to the receipt?

A I didn't. Of course, I didn't go back in the home.

Q Was there any reason why you didn't add them to this receipt?

A It didn't seem of importance; it was just part of the routine.

Q As a part of the routine, as you say, if you see [fol. 51] something you think might help, you take it?

A Yes; with permission, of course.

Q You are not saying that you had permission from Mrs. Coolidge to take these things out in the car without telling her about it?

A I assumed that the sergeant might have told her when he went to the door. I left it there.

Q In your business you claim that you give receipts, but you don't know whether Detective Sergeant McBain did or not?

A In this case, taking the four guns, I thought that it was advisable to take these, yes.

THE COURT: Four guns?

MR. REYNOLDS: Yes, Your Honor, four guns, a red jacket; and in the list there is a gun charged as being the alleged murder weapon.

Q Now, Inspector, this is the first time that you were ever at the Coolidge house?

A That is right.

Q And you can't think of anything else other than the receipted items, the trousers and the shot?

A To my knowledge I had nothing to do with taking anything else out of the house.

Q Did you observe Detective Sergeant McBain take anything other than what is listed on the receipt or that you found in the cars?

[fol. 52] A No, sir.

Q What did you do with these items when you got back to the station?

A Took them upstairs, laid them on the desk, and they were tagged.

Q I assume these items are still at the station?

A They were turned over to another party.

Q Did you turn them over to Captain Stipps?

A Yes; by us to Captain Stipps, and I believe he gave them to another party.

Q But you made your reports to Captain Stipps of all your events of the day?

A I believe, that was pertinent.

Q Mr. Coolidge was arrested February 19th, some seventeen days later?

A Yes.

Q Were you in on that?

A Yes, in a way of speaking I was involved with—not with, but I was at the station when he was brought in.

Q Did you go to his house the night he was arrested?

A No, sir.

Q Did you ever go to the house that night? I understand even after he was back in the station certain police stayed in the house all night.

MR. BUSSIERE: I think in the scope of the hearing [fol. 53] now being held this is immaterial. This is in a desire to save the Court's time.

THE COURT: What is the materiality?

MR. REYNOLDS: I want to get back into an item on the inventory and the warrants.

(No answer)

Q Did you at any time go back to the house and look the house over after February 2nd?

A No, sir.

Q You never went back there yourself?

A I never went back there myself. No, sir.

Q Inspector, it is fair to say that the items that you gave the receipt for and the other items taken from the car on February 2nd were all related to your investigation of the Mason case?

A As far as I am concerned, yes.

Q And had nothing to do with the Cote case?

A Pardon?

Q None of these items that you have listed had anything to do with the Cote larceny case?

A No, sir.

MR. REYNOLDS: That is all I have. Thank you very much.

CROSS EXAMINATION BY MR. BUSSIERE:

Q Inspector, did you look through the house for any weapons?

A No, sir.

[fol. 54] Q How did you happen to obtain any weapons?

A Well, we had been talking to Mrs. Coolidge, and told her most everybody who had been questioned about the Mason case, we were taking items for examination—such as guns and so forth. She stated that they had four guns in the house.

Q Inspector, as of the time she stated that, did you know the type calibre or type of gun that had been used to kill Pamela Mason?

A I knew of the calibre, but right now I can remember—it was twenty-five-point-something or other. I can't remember now.

Q You knew what—

A We were looking for a small calibre gun of some sort.

Q Were you looking for any particular type?

A Primarily, a rifle.

Q Or a handgun?

A Anything like that, yes.

Q You interviewed many persons in the course of your investigation of the Pamela Mason case?

A Yes. Very often.

Q Did you take any firearms?

A Yes.

Q Why?

A To ask if it was all right with them to take them [fol. 55] to the station for a ballistics test.

Q As far as the firearms in the Coolidge home, who got them from where they were?

A Mrs. Coolidge got them from the closet.

Q Did she say anything when the firearms were asked for for examination?

A She said that they had four guns in the home.

Q Did she say anything else?

A After telling her about the examination of guns and so on, she said she had nothing to hide and she had no objection to our taking them along for tests.

Q As a matter of fact, didn't she want you to take them?

A Yes.

Q Was the same type of conversation had with respect to the red hunting jacket and the one pair of trousers that came out of the house?

A That is right. She had no objection to our having them.

Q How would you describe Mrs. Coolidge's attitude toward you?

A Yes. She was a very, very nice woman. She made coffee for us, and was very co-operative.

Q She was anxious to clear her husband?

A Absolutely.

MR. DEVINE: Just a minute. I move that that be stricken.

THE COURT: It may be stricken.

[fol. 56] Q Would you describe her attitude?

THE COURT: He has already said she was co-operative.

A She was very co-operative.

Q Would you tell the Court the manner in which she was co-operative?

A In handling the guns, she asked us to take them along and had no objection whatsoever. She made us coffee, and she indicated to me that she was a very nice and very co-operative woman.

Q Just going back to a few general questions about your booking procedure and arrest procedure, when a person is placed under arrest do you take his property from him?

A Taking a general case?

Q General procedure.

A In a general case when a person is arrested he is brought before the booking cage, and he is asked these questions—name, address, date of birth, and then the items are taken from him by the houseman.

Q What is done with the articles?

A They are placed in an envelope and placed in the desk.

Q When were the articles taken from him?

A Immediately after the questions of the officer in charge.

Q When you were at the station was Edward Coolidge free to come and go as he pleased?

A Yes, he was.

[fol. 57] Q Was he in a cell?

A No.

Q Was he free to go where he wished?

A Yes, as far as I was concerned he was.

Q Did he leave at any time to go anywhere by himself?

A Yes, he did leave to go to the bathroom.

Q How would you describe his attitude?

A He was very co-operative.

MR. BUSSIÈRE: That is all.

MR. REYNOLDS: If the Court please, I understand the State has the booking sheet?

MR. BUSSIÈRE: Yes; I represent this is the booking sheet of February 2nd and February 3rd, Your Honor.

THE COURT: We might as well take a recess while you are looking at them.

(Recess 3:35 to 3:55 p.m.)

MR. BUSSIÈRE: May it please the Court, I believe counsel have had an opportunity to examine the booking sheets of February 2nd and February 3rd of this year.

MR. REYNOLDS: Yes, Your Honor. I would like to have this police blotter marked as an exhibit.

MR. BUSSIÈRE: Your Honor please, it adds nothing [fol. 58] to what is already in evidence.

THE COURT: What has it got that hasn't been introduced? Nothing at all. I thought it had been agreed the time was from one p.m. on.

MR. REYNOLDS: That is all right. I think he said it was quarter of one when he got to the station and Coolidge was there then.

THE COURT: I don't see that that adds anything to what is already in evidence.

MR. REYNOLDS: All right, Your Honor.

REDIRECT EXAMINATION BY MR. REYNOLDS:

Q I have just a couple more questions, Inspector, with regard to lie detector Sunday, February 2nd.

A Yes.

Q These shells were, you say, taken out of the glove compartment of the Pontiac?

A Yes, sir.

Q Were they loose or were they in a box?

A They were boxed.

Q They were empty shells?

A No; loaded shells.

Q And they were twenty-two calibre?

A They were twenty-two calibre.

Q Did you pick up any other shells that evening—empty shells?

A I would say no. I don't believe I did, no. It was [fol. 59] just the box. I am pretty sure that is all there was.

Q Did you look for any shells in the house in the area where the rifles were found?

A No, sir. We didn't look for anything in the house.

Q I understand as a matter of routine you were going around to homes looking for—

A Guns.

Q Guns and other things—small calibre rifles?

A Guns. Primarily guns.

Q You told Mrs. Coolidge, as a routine matter, that you were looking for these things and wanted to take them to the station and check them out?

A Yes. With permission.

Q She told you he had guns?

A Yes.

Q You were aware that he had guns?

A Yes. Four.

Q You knew that before you went there?

A I don't believe I knew he had any guns, no.

Q It didn't come out in your questioning from one o'clock?

A The questioning was not relative to guns. No.

Q As I understand it, it was your believe that at any time from quarter of one on, when you first saw Edward Coolidge, until two o'clock in the morning he could go home?

A He could have gone if he wished.

[fol. 60] Q You just didn't think to drive him to his home at ten-thirty that evening?

A No; no, sir.

THE COURT: How did he get there?

WITNESS: He came in his own car.

THE COURT: How did it get back to his house then?

MR. REYNOLDS: I think we can show that some time in the afternoon Mrs. Coolidge went to the station and brought his car home, so that both of their cars were at the home, Your Honor.

WITNESS: Yes, both of the cars were at home.

MR. REYNOLDS: That is all I have.

THE COURT: Anything further?

MR. BUSSIÈRE: No.

MR. REYNOLDS: We would like to call Detective Sergeant McBain.

[fol. 61]

TESTIMONY OF WILLIAM P. McBAIN

Sworn by Mr. Reynolds; direct examination by Mr. Reynolds:

THE COURT: May we confine the questioning of the sergeant to the visit to Mrs. Coolidge's house?

MR. REYNOLDS: With one exception, Your Honor, —some questions about the lie detector tests.

THE COURT: Well, I am not concerned with the lie detector tests today, am I?

MR. REYNOLDS: I think in the lie detector test the question was asked, "Do you know of any previous unsolved crimes?", and at the time Edward Coolidge said, "Yes, a oCte larceny that I am involved with."

THE COURT: You mean from then on he was under detection.

MR. REYNOLDS: Yes.

Q May I have your full name and occupation?

A William P. McBain.

Q Your position?

A Detective sergeant with the Division of State Police.

Q You have been with the State Police for how long?

A Twenty-four and one-half years.

Q At some point you were requested by the Attorney [fol. 62] General's office to assist the Manchester police force in investigating the Pamela Mason case?

A Yes.

Q One of your duties is giving lie detector tests?

A Yes.

Q You are the only one of the force which does that?

A No. There is another operator—Major Grey.

Q When was the first time you saw the defendant?

A I will have to go back to 1960 for that answer.

Q I won't go into that then, because we are confining it to this time.

A February 2nd, the afternoon, on Sunday.

Q That was when Officers LeClair and Glennon arrived at the State Police Headquarters?

A That is correct.

Q For the purpose of your giving him a lie detector test?

A Yes.

Q You made a report and all that, I assume?

A Yes, I did.

Q How long was he in taking this lie detector test?

A The actual test, as far as the machine being in operation, wouldn't take longer than fifteen or twenty minutes.

Q Now, you asked him a number of different questions, I understand, and looked at the impulses to see if you were getting a reading which will tell you something?

[fol. 63] A Yes.

Q Can you give an example of some of the standard questions that you asked on the test?

MR. BUSSIERE: Your Honor please, I don't know that this is material.

THE COURT: No; I don't either.

MR. REYNOLDS: I will strike it.

THE COURT: I am a little troubled, getting into this field. Well, you are withdrawing the question anyway?

MR. REYNOLDS: I will withdraw that.

Q At some time,—at some point that Sunday afternoon while you were with Edward Coolidge up in Concord, did something about a larceny—Cote larceny—come up?

A Yes.

Q Can you tell me what you claim came up and what was said?

A Well, all questions which are going to be asked on the machine are gone over with the subject taking the test before-hand, and one of the question I asked him was how he was going to answer, "Have you ever committed a serious undetected crime?" To which he answered, "Yes. A robbery." And then he went on to explain the larceny from the Cote Bakery.

Q And that is how it came out? Is that right?

A That is right.

Q Then you reported this to either Inspector Glennon [fol. 64] or Officer LeClair?

A I did.

Q Did you drive back with them to Manchester?

A No.

Q At some point, around six or so in the evening up in Concord, Edward Coolidge had admitted to you committing a larceny?

A Correct.

Q Sometime later on you came to Manchester?

A I did.

Q What time was that?

A I would say it was approximately eight-thirty or nine o'clock that evening.

Q And at that time did you see Edward Coolidge and question him, or sit in while the questioning was going on?

A No. I first called Captain Stipps, who was at his home, and we arranged to meet at the Manchester police station.

Q Was the purpose of your coming to Manchester and calling Captain Stipps to arrange your discussing Edward Coolidge and the Pamela Mason case?

A Yes. Also, I would like to add to that—also further investigation of the Cote larceny.

Q When you left Inspector Glennor and Officer Le-Clair, you had told them about the larceny?

A Correct.

Q Had you told them to check it out, or suggested [fol. 65] that they might do that?

A No, I did not.

Q In any event, you met Captain Stipps in Manchester around nine o'clock to discuss Edward Coolidge, Pamela Mason, and the larceny?

A Yes.

Q Did you question Edward Coolidge at all that evening?

A Yes, I did.

Q When did you start talking with him?

A Well, it was after we got back from talking with his wife.

Q All right. The first time you talked with Edward Coolidge after Concord was after you had seen his wife?

A There was some conversation between us after the test.

Q But no conversation in Manchester until after you saw his wife?

A Yes. Correct.

Q You went over what he said with Inspector Glennon?

A Yes.

Q And you said there were some things you wanted to check out, and you were looking especially for small calibre rifles and so on?

A There was no special intention on my part to look for some firearms, if that is what you mean.

Q It came to your attention that he had some firearms in the house, you asked to see them, and you were shown them?

A Yes. After a statement was made to Mrs. Coolidge [fol. 66] that other suspects in this Mason case were being questioned, and whenever firearms were brought out they were asked if they could be tested.

Q Was it you who decided to go over to the house with Inspector Glennon, were you ordered to, or how did that work out?

A I think Captain Stipps assigned Inspector Glennon to go over with me.

Q As a result of conversation with Captain Stipps you thought it was a good idea to go over there that night?

A Yes.

Q Rather than call and asked her to come to the station?

A Yes.

Q Was there any special reason you had to see her that night? Was there any—

A No, but I wanted to futher the investigation by confirmation which only she could give.

Q So your going over had nothing to do with the Mason case?

A Oh, yes it did.

Q But incidentally you wanted to check out a feature of the larceny case?

A That is right.

Q Inspector Glennon suggested you were shown certain things and took certain items, and in addition you went out and inspected the cars?

A That is right—with the permission, and with the [fol. 67] keys which were given to us by Mrs. Coolidge.

Q She gave you the keys and you went out and looked in both cars?

A Yes.

Q Looking in the glove compartment, the trunk, and so forth?

A Yes.

Q Was it you or Inspector Glennon who found the twenty-two calibre shot?

A I found the twenty-two calibre shot in the glove compartment.

Q And you took those?

A Yes.

Q And was it a pair of trousers?

A I found a pair of trousers in the trunk.

Q And took those?

A Yes.

Q Did you bring them into the house?

A When I brought back the keys and the interview was about to finish, I went back to Mrs. Coolidge and told her that we were taking a box of twenty-twos and another pair of pants.

Q Where was that? Where were you standing when that took place?

A In the kitchen.

Q You went back in the house?

A Yes.

Q Was Inspector Glennon with you?

[fol. 68] A No. He was outside.

Q Did you see Inspector Glennon give her a receipt for these other items?

A No.

Q Did you tell her that you were going to return them tomorrow, or sometime?

A I didn't say a date, no. I said that they would be returned when we were finished.

Q Did you take any other items from the house, property or cars, other than those that are listed? I show you Defendant's Exhibit H, which is Inspector Glennon's receipt listing these various items. Do you know of anything else which was taken that evening?

A Yes. A recall a single glove.

Q A single glove?

A Yes, a single glove which was found in one of the cars, but I am not sure which car it was.

Q Where in the car? Back seat? The trunk?

A I think it was found in the back seat.

Q What material glove? A leather glove, a mitten, or—

A I think it was a brown furry substance, which could have been partly leather, too.

Q Left hand or right hand glove?

A I don't recall.

Q What did you do with these items?

[fol. 70] A They were brought to the Manchester police station and turned over to Captain Stipps.

Q Did you make a report about the events of that evening, what was taken, your conversation with Mrs. Coolidge, and so forth?

A Yes; in conjunction with Inspector Glennon.

Q And in that report I suppose you itemized again the items which you took—the glove, and so forth?

A I believe so, yes.

Q All right. Can you think of anything else—trousers, glove, and a box of twenty-two caliber—over and above what is on the receipt list?

A I am not clear as to whether another hunting jacket was taken. We were shown two hunting jackets, and whether the other one was taken or not, I do not recall.

Q Talking about clothing, in addition to the two pair of trousers and maybe one or two jackets, were there any other items of clothing?

THE COURT: Why don't you let him see that? It might refresh his recollection.

MR. REYNOLDS: The word here is "toque", which I didn't know what it was until recently.

THE COURT: To me it is a cap.

Q Was it a stocking cap or some kind of hat?

A I don't recall any kind of cap or hat.

THE COURT: Maybe I am wrong. Isn't a toque a [fol. 71] cap?

WITNESS: Yes, it is.

MR. REYNOLDS: I am referring to Defendant's Exhibit G. What is a toque?

MR. KALINSKI: I have the same understanding as Your Honor has. That is what was reported to me and what I put in the letter.

THE COURT: Perhaps the State will be helpful and tell you what if anything else was picked up, other than what these two gentlemen have testified to.

MR. KALINSKI: I don't think so, Your Honor.

MR. REYNOLDS: Seems to me we have a missing toque, Your Honor.

THE COURT: Seem sto me it is a toque that nobody knows where it came from.

Q Did you go back to Seames Road, to the Coolidge home, at any time other than this night?

A Yes. We went back later with a search warrant.

Q That was the day he was arrested, or the day after?

A The day after, yes.

Q At that time you didn't pick up any hat?

A Well, of course there was a group there.

Q I mean you don't recollect picking up a hat yourself?

[fol. 72] A No, I don't.

MR. REYNOLDS: That is all. Thank you very much, Mr. McBain.

THE COURT: Do you have any questions?

MR. REYNOLDS: Oh, I have just one more.

Q I want to make absolutely sure. Your recollection is that you didn't see or didn't take anything other—whether it is clothing or not, or whatever it is—other than these items which are on the receipt, plus the items you have already told us about?

A Not to my knowledge now.

Q Well, there is a record some place—

THE COURT: May I inquire at some point, when you bring in things does someone make a list of them?

WITNESS: That would have to be answered by one of the Manchester officers. You might be referring to a small knife which I recollect might not have been included in this list.

Q Are you referring to finding a knife?

A In the glove compartment of the car.

Q On February 2nd—Sunday night?

A Yes.

Q That is the glove compartment of what car now?
[fol. 73] A The Pontiac.

Q Did you take that?

A It is not on the list.

Q Forgetting the list, do you remember taking a knife?

A I remember finding it, but whether I took it or not I don't know.

Q All right. What kind of a knife?

A I would call it a paring knife.

Q Paring knife, trousers, a box of shells, a glove—plus these things, on this list. Anything else?

A Not that I recall.

Q At any rate, you did make a list of the things you and Inspector Glennon took, and you put it on a report which you and Inspector Glennon signed?

A I believe so, yes.

Q You both signed it?

A No. I believe Inspector Glennon made it out and I looked at it.

Q Did you sign it?

A No.

Q Did you make out any report as to your activities on February 2nd, 1964?

A As to the conversation with Mrs. Coolidge I did make a report.

[fol. 74] Q Was your report stapled to Inspector Glennon's, or was it a separate report?

A It was a separate report.

Q Who did you make your report to?

A That would be to Colonel Regan, who would send it to the Manchester police.

Q You didn't turn it over to Caption Stipps; your chain of command was Colonel Regan?

A That is right.

Q And he might or might not have turned it over to Captain Stipps?

A That is right.

MR. REYNOLDS: Thank you very much.

CROSS EXAMINATION BY MR. MAYNARD:

Q When you went down to the house that evening to see Mrs. Coolidge, you had some matter that you wanted to corroborate or clear up, as a result of your talk with Mr. Coolidge?

A That is right.

Q Will you tell us what your reason was for having a desire to go down to see Mrs. Coolidge?

A When Mr. Coolidge explained to me about the larceny of money from the Cote Bakery, I inquired how he did it and what he did with the money. He told me that he had bought his wife a washing machine. That was one of the reasons I went down, to confirm that with Mrs. Coolidge—which she did confirm.

[fol. 75] Q When you went down, did you and Inspector Glennon go to the house at the same time?

A Yes.

Q Did you knock on the door?

A Yes.

Q Would you tell us what was said when your knock was answered?

A Mrs. Coolidge came to the door. We identified ourselves and told her we would like to talk with her, if possible.

Q What did she say to that?

A She invited us in.

Q When you went in, who was there?

A It would be Mrs. Dorothy Coolidge—Edward Coolidge's mother.

Q As well as his wife?

A Yes.

Q Did you go in the front door?

A It was the side door, which lead to the kitchen.

Q After you went in were you asked to be seated?

A Yes.

Q Did you sit in the kitchen or in another room?

A We sat in the living room.

Q Was the living room off the kitchen?

A Yes.

Q Did you at some time go into the bedroom?

A Yes, at a later time I did.

[fol. 76] Q While you were there Mrs. Coolidge made you some coffee?

A Yes, she did.

Q How would characterize her attitude toward you and Inspector Glennon?

A She was very co-operative.

Q I am speaking of Mrs. Coolidge, the wife?

A Yes.

Q Did you talk with Mrs. Coolidge, Sr.?

A Just a few questions.

Q What was her attitude?

A I will have to say that she interrupted our line of questioning in the first place.

Q That is when somehow or other it was made apparent to her that you wanted to talk to the younger Mrs. Coolidge alone?

A Correct.

Q How long after you arrived there and started talking with the Coolidge ladies was it that the senior Mrs. Coolidge left?

A I would say between ten and fifteen minutes.

Q How long were you in the house all together?

A I would say we arrived there at ten-thirty and left around eleven-fifteen or twenty.

Q While you were there did you search the premises?

A No.

MR. REYNOLDS: I object. This is a pretty legal word. I think the facts speak for themselves as to what [fol. 77] rooms they may have gone into or didn't.

THE COURT: I think it is clear, as I understand their previous testimony, that they took nothing from the premises—not including the two cars—but what was brought to them by Mrs. Coolidge. Am I correct there?

WITNESS: That is correct.

THE COURT: And that they did not leave the room that they were in for the purpose of getting anything. Is that correct?

WITNESS: There was one instance where Mrs. Coolidge did go into the bedroom. I think that was with regard to the hunting jacket or the trousers—the uniform trousers.

THE COURT: Did you follow her into that room?
By "you" I mean you and/or Inspector Glennon.

WITNESS: Yes.

Q Did you look into the closet, or feel around?

A Oh, no.

Q Did you look around any of the other areas of the house, except where you were invited?

A No.

Q In taking the hunting jacket, did you go through [fol. 78] the pockets of the hunting jacket?

A No, I didn't.

Q You couldn't say if there was anything in the pockets or not?

A No.

Q Were you looking for any particular firearm at the house?

A No, sir.

Q When you went to the house did you go to obtain any firearms?

A No.

Q When you went into the bedroom, were you requested to go, or did you just follow Mrs. Coolidge?

A I would say that Mrs. Coolidge, in getting the things, said—invited us to come along. She would point out a pair of trousers and say, "Would this be anything you are looking for?"—in that general vein.

Q Did you ask at some time about looking in the automobiles?

A Yes.

Q How did that come about? Who asked, and what if anything did Mrs. Coolidge say?

A I told Mrs. Coolidge we would like to look over the cars. She used the expression, "We have nothing to hide. Here are the keys. Go ahead and look them over as much as you want."

MR. MAYNARD: I have nothing further.

REDIRECT EXAMINATION BY MR. REYNOLDS:

Q I understand, however, that you were over there looking for items—firearms and what have you?

[fol. 79] A Only when it was suggested to Mrs. Cool-

idge that we were checking on firearms, and did they have any.

Q None of the items that you were looking for had anything to do with the Cote larceny?

A That is true.

Q You went over there looking for a washing machine?

A That was only one reason.

Q Didn't you believe Edward Coolidge when he told you he had committed this larceny?

A Yes, I did.

Q As of six o'clock that evening you were satisfied that he had committed the larceny?

A But there was no corroboration by another party, which could have been done.

Q All items taken that night, I understand, had to do with the Pamela Mason case—the four guns and all the other items? None of them had to do with the larceny?

A Well, we didn't take the washing machine.

Q Answer my question. None of the things you took had to do with the larceny?

A No.

Q You went back to the station after that and questioned him for a while?

A Yes.

Q Were you present while he had something to eat?

[fol. 80] A Yes. He was brought in sandwiches and coffee.

Q What time was that? Between eleven and twelve?

A I would say it was around midnight.

Q When you arrived, Mrs. Coolidge, Sr. was there. When you questioned Joanne Coolidge, she interrupted, as I understand it?

A Yes.

Q In some way or other, the Attorney General says it was made clear to her that she should leave. Did you ask her to leave?

A I would like to make an explanation as to that. When we talked with young Mrs. Coolidge, we inquired whether we should talk to her in the presence of her mother-in-law. She intimated, "Go ahead; anything told

to her mother-in-law was all right with her." Then we started to question Mrs. Coolidge about her husband's activities on the night of January 13th. Mrs. Coolidge, Sr., or the mother-in-law, then made some statement or interruption.

Q So you asked her if she would kindly leave?

A Well, it wasn't put as bluntly as that, but that was the general inference, yes.

Q Well, tell me how you put it.

A I think we said something about we could come back later when Mrs. Coolidge was alone.

Q Isn't it true that you could have come back the next morning very easily?

[fol. 81] A Yes, I suppose we could have.

Q You knew that this lady had a very young child that might have been a year and a half old?

A Yes.

Q The child was in bed, she was alone, and she was a young lady?

A Yes.

Q It was fairly late at night, and her husband—you knew—had been gone at least from one o'clock on?

A That is correct.

Q By the way, when you did go over there Inspector Glennon did tell Mrs. Coolidge, "Well, we don't know whether or not your husband will come home tonight."?

A Yes.

Q Didn't she inquire where her husband was?

A Yes; and out of courtesy we told Mrs. Coolidge that it was very possible that he would be detained in the station that evening.

Q But whoever it was hadn't made up their mind? Is that right?

A Well, I believe it was Captain Stipps who have had to be consulted in that respect, yes.

Q You didn't say, "Your husband is being held at the station on an arrest under a charge of larceny."?

A No.

Q Because he wasn't arrested, was he?

A Not at that time.

[fol. 82] Q Well, not until much later?

A That is right.

Q So you said, "Your husband is in the station, still being questioned on the Mason case."?

THE COURT: I believe the previous phraseology was that her husband was being detained.

MR. REYNOLDS: Detained. I am sorry.

A That is right. I don't believe there was any specific case mentioned—whether it was the larceny case or the Mason case.

MR. REYNOLDS: I have no more questions, thank you.

MR. MAYNARD: I think Your Honor's recollection of what Sergeant McBain said is different than my recollection.

THE COURT: All right; let's have it read. Go back two or three questions.

(Record checked and read)

MR. MAYNARD: I think the sergeant said that they were going to detain him until after Captain Stipps made up his mind whether there was a case.

THE COURT: Let's ask the sergeant then.

[fol 83] WITNESS: That is what was in my mind—that it was very possible that he would be detained when we got back with this information.

MR. REYNOLDS: One more question then.

Q He wasn't under arrest when you went to Mrs. Coolidge's house?

A Not to my knowledge.

Q Not to your knowledge. And you had just left Captain Stipps, who was in charge of the investigation?

A Yes.

Q It was your understanding that he was free to go at any time?

A Yes. We knew who he was, and I think if he had to be picked up we could do it very easily.

Q There was no fear that he would flee the country?

A No. In fact, he made an appointment to come back to see me the following Sunday.

Q You felt that he was satisfied to be in the station all this time?

A I can't answer that. He wasn't in the station all the time.

THE COURT: Did he ever ask to go home at any time and come back at any time when you talked with him at the station?

WITNESS: No.

Q When you were at the station did you or did any-
[fol. 84] one in your presence say to Edward Coolidge,
"Ed, any time you want we will drive you home."?

A No; I wouldn't say that.

Q Did you ever hear anyone, in your presence, say that to him?

A No.

MR. REYNOLDS: That is all.

MR. MAYNARD: We have no further questions.

TESTIMONY OF JOHN A. STIPPS

Sworn by Mr. Graf; direct examination by Mr. Graf:

THE COURT: Tell me—I have seen the rather lengthy deposition. Are you possibly going to ask Captain Stipps anything not asked in the deposition?

MR. GRAF: Just one or two things. I don't believe I will be very long with the captain, Your Honor.

Q Will you state your name and address?

A John A. Stipps, 659 Hanover Street, Manchester, New Hampshire.

Q You are a police officer?

A I am.

Q Captain?

A Yes.

[fol. 85] Q In charge of the detective division?

A Yes.

Q On January 21st—was that the date the office of the Attorney General and the County Attorney took over control and direction of this case?

MR. BUSSIÈRE: I object. I don't believe that has anything to do with the issue now, Your Honor please.

THE COURT: Yes; unless you agree that the Attorney General had control of the case at the time of the

issuing of the warrants. Do you agree that he was in complete charge at the time of the issuance of the warrants?

MR. BUSSIERE: We do agree that the Attorney General had general supervision of the case.

THE COURT: And that he was chief investigating office at the time he, as magistrate, issued the warrants?

MR. MAYNARD: The representation I would make is that I had general supervision over the investigation prior to the time of the finding of the body and at all times after that.

THE COURT: I think that is satisfactory.

Q We talked last June at some length about police procedure, in regard to the records? Do you recall that? [fol. 86] A Yes.

Q As I recall the situation, all records went to you at the first and were made available to the office of the Attorney General. Is that correct?

A Yes.

Q Pretty much from January 21st or up to February 19th, the date of arrest, you had pretty much daily conferences—yourself and other investigating officers of the Manchester Police Department and the office of the Attorney General and the County Attorney?

A You said daily?

Q Daily conferences.

A Well, we had conferences. How often, I can't tell.

Q You had one at least once a week? Is that fair to say?

A It is possible.

Q It is probable?

A Yes.

Q The conferences had to do with the progress of the investigation of the case?

A Yes.

Q And Mr. Maynard was a party to those conferences?

A Yes.

Q Calling your attention to January 28th, did you instruct Sergeant Doyon of the state police and *Inspector LeClair* of your department to go to the Coolidge home?

[fol. 87] MR. BUSSIERE: We object, Your Honor please, and feel that that is immaterial to the issue being tried before the Court.

THE COURT: I don't understand the purpose of this.

MR. GRAF: There has been some reference here, and I think the facts of the situation are that on the 28th Captain Stipps instructed two police officers—and I believe it was just two police officers—to go to the Coolidge home, at which time they were shown various items.

THE COURT: I don't see that it makes much difference. There is no claim by the prosecution as I understand it that the acts of Sergeant McBain and Mr. Glennon were not authorized as a part of the investigation. I don't see the point otherwise.

MR. GRAF: The point is solely the fact that the Manchester Police Department here allege that on Sunday, February 2nd certain firearms were in the possession of Mr. Coolidge.

THE COURT: Oh, you mean before they went there?

MR. GRAF: Yes, before they went there.

THE COURT: You may ask that.

[fol. 88] MR. GRAF: I will ask generally. Strike the question.

Q Prior to February 2nd did you have personal knowledge of the fact that Mr. Coolidge owned shotguns and rifles?

A I was aware of the fact that he owned a Remington shotgun, a 410 shotgun and a thirty-thirty rifle, and that is all.

Q Calling your attention to February 2nd—Sunday, February 2nd, sometime in the evening there has been testimony that Mr. Coolidge returned from Concord. Do you recall that testimony?

A Yes.

Q At some point in the evening did you in fact instruct Detective Sergeant McBain and Inspector Glennon to go to the home of Mr. Coolidge?

A Yes. Let's say we had a conference and the three of us thought it would be best that they do it.

Q My point is, it was your suggestion that they go to the Coolidge home?

A Yes.

Q Was this at the instruction of any member of the Attorney General's staff or the County Attorney's staff?

A No.

Q They did not suggest this to you?

A No.

Q By the way, did you or any of the men subject to your control inform Mr. Coolidge that they were going to the house?

[fol. 89] A I don't recall if Sergeant McBain had informed him. I don't know.

Q And, Captain, again referring back to your deposition, do you recall at some point in the day Mr. Reynolds started asking you some questions?

A Yes.

Q Do you recall that?

A Yes.

Q Do you recall Mr. Reynolds asking you these questions—and I refer to page 154 question 691: "And do your records indicate that you told Mr. Coolidge that you were sending them there?" Your answer was, "No." Is that correct.

A That is the way I meant it now.

Q Is that what you said back in June?

A Yes.

Q The next question, "Did you tell Mr. Coolidge you were sending them there?" And your answer was "No." Is that right?

A It was "No".

Q So as far as you are concerned, you have no recollection of anyone telling Mr. Coolidge that the officers were going to the house?

A No.

Q Did you give these two officers any specific instructions?

A No.

Q Did you tell them to enter the house—gain entrance [fol. 90] to the house?

A Gain entrance to the house?

Q Yes.

A It is assumed if they went to see Mrs. Coolidge they would enter the house.

Q Did you appraise them if no one was at the Coolidge home not to enter the house?

A That is right; to come back.

Q If she wasn't home to come back?

A That is true.

Q But as long as she was at home you told them it was okay to go in?

A That is right.

Q And these two officers returned to the station at approximately eleven-thirty that evening?

A About.

Q And they brought with them the items which have already been referred to today?

A Yes.

Q And after they returned did you or any of the men under your control or subject to your control inform Mr. Coolidge that they had been to his house, if you know?

A I don't know.

Q You don't know. Earlier in the day, Mr. Coolidge returned from Concord—about six or seven o'clock in the evening?

[fol. 91] A Yes.

Q Isn't it a fact that when he got back from Concord he was not free to leave the station? He wasn't free to leave at that time, was he?

A If he suggested that he was going to leave, I might have—he might have been allowed to leave. He wasn't under arrest at that time.

Q Again let's go back to the deposition. Let me see if I can find this. Again referring to your deposition—page 148, Brother Maynard—

MR. MAYNARD: Do you suggest that the deposition will impeach the testimony he just made; or will it be like the last time—will it corroborate it?

MR. GRAF: I think it will show that at six o'clock or after six o'clock Mr. Coolidge's stay at the station was involuntary.

Q Question 169, "Could you explain?" Answer, "I knew he was there on a voluntary basis." Next question, "And at six did it become involuntary, shortly after six o'clock that night, six p.m.?" And you go on to say, "Why would it become involuntary at that time. The officers who conducted that investigation obtained a confession." Did I read those correctly?

A More or less.

Q Well, did I read them correctly?

[fol. 92] A I couldn't follow you. I don't know where you started.

Q I started up here. Those were the questions and the answers given, weren't they?

A I believe it was.

Q That is right. So as far as you were concerned, at six o'clock in the evening Mr. Coolidge's presence at the station was no longer voluntary? Isn't that so?

A It was voluntary up to this point.

Q After six o'clock it was involuntary?

A If he had asked to leave then it would have been necessary to book him for further investigation. We had not completed our investigation at six o'clock, but at that time I was aware that he would be charged before the night was over.

Q Do you mean to say after six o'clock that night if he had said, "Captain Stipps, I am going home", he would have been free to go home?

A Then I could have booked him for investigation.

Q One other thing. The confession you referred to related to the Cote larceny situation?

A That is right.

Q Captain, do you have a list or a record of those items which Detective Sergeant McBain and Inspector Glennon submitted to you upon their return from the Coolidge house on February 2nd?

A Yes.

[fol. 93] Q You have a list in court?

A I have a memorandum which I had written. I thought it over today. I had written down some of the items taken.

THE COURT: I am confused. Is this something you have written down today?

WITNESS: That is right.

MR. GRAF: I would like to see it.

THE COURT: I don't see how that would be helpful to us. We already have a list of the things which the State thinks—

MR. GRAF: I would like to see the official record, Your Honor.

THE COURT: That is what I mean; I don't see how anything that he did today would be helpful to us in this matter.

Q Do you have a record which was made on the day the things were brought in?

A Yes.

Q But you don't have that record with you now?

A No.

MR. GRAF: That is the record we would like to see, Your Honor.

THE COURT: I assume the State can furnish it. You are probably are interested in seeing it, too, unless [fol. 94] it is what is on the list that comes from Brother Kalinski.

MR. KALINSKI: I don't know what the witness is referring to.

THE COURT: We are all a little confused by the fact that there seems to be some things on this list which Sergeant McBain and Inspector Glennon didn't testify to picking up. I imagine it is a matter of their recollection, and that somewhere there is a record of what they brought back that day.

MR. KALINSKI: Yes, Your Honor.

THE COURT: Do you have any questions?

MR. BUSSIERE: One or two.

CROSS EXAMINATION BY MR. BUSSIERE:

Q Captain, Sergeant McBain testified that he called you at your home around nine o'clock that night?

A Yes.

Q Any reference which you made to anything which happened after six o'clock—is that something you have

personal knowledge of, or is it something you are guessing at?

A Yes. I might have gone home around seven o'clock, knowing an investigation of the larceny at the Cote Bakery was in progress. It was not completed, and as long [fol. 95] as we had a suspect who was willing to stay, as Mr. Coolidge was, there was no reason why he should have been booked.

MR. BUSSIERE: That is all.

REDIRECT EXAMINATION BY MR. GRAF:

Q After Mr. Coolidge returned from Concord, isn't it a fact that all the questioning or interrogating, or whatever you want to call it, related primarily to the Pamela Mason case? Isn't that the fact?

A Yes.

Q And the larceny case was incidental so far as you were concerned? Isn't that right?

A We thought the larceny case was not as serious as the Pamela Mason case, and we put more time on that than the other.

Q And the purpose in sending the officers to the Coolidge home on Seames Drive was primarily in connection with the Mason case?

A Well, not primarily with the Mason case. It was two-fold; the larceny case and the Mason case.

Q You said the larceny case was not so serious?

A I don't know what they did there. I assume it was with reference to both.

Q Well, in your sending them to Seames Drive that evening of February 2nd, at least one of the reasons for sending them there was for the investigation of the Pamela Mason case? Isn't that so?

[fol. 96] THE COURT: How much longer are you going to be?

MR. GRAF: Just one more question, Your Honor.

THE COURT: All right.

Q Again referring to your deposition, page 152 question 683—you read along with me and make sure I read it correctly—Mr. Reynolds asked, "I assume since he made this confession you considered this grand larceny

case solved as of six o'clock?" Answer, "Well, solved, yes." Next question, "Is it fair to say all the questioning which took place from six o'clock until three in the morning had nothing to do with the Cote case then?" Answer, "I would say that is possible." Were those questions asked, and were those your answers?

A Yes. That is right.

MR. GRAF: That is all.

THE COURT: Are you through now with Captain Stipps?

MR. BUSSIÈRE: Yes.

MR. GRAF: I am through with Captain Stipps. Thank you, Captain.

THE COURT: How much more do you expect to have in the way of testimony?

MR. DEVINE: I would say three witnesses, Your Honor.

[fol. 97] THE COURT: You have three witnesses?

MR. DEVINE: Yes.

THE COURT: Will you need Mr. Coolidge here tomorrow?

MR. DEVINE: No, I don't believe he will need to be here tomorrow, Your Honor.

MR. BUSSIÈRE: Your Honor, most of the officers are here under subpoena.

THE COURT: If they indicate which three they want, I assume you will produce them tomorrow morning?

MR. BUSSIÈRE: Yes, Your Honor.

THE COURT: All right. You do that. I assume that you can indicate which three you want, and also that Mr. Coolidge will not be here tomorrow.

I will see counsel in Chambers before you leave.

(Conference between Court and counsel in Chambers off the record)

SEPTEMBER 1, 1964.

THE COURT: You may proceed.

MR. GRAF: Thank you, Your Honor. Captain Stipps.

[fol. 98] CAPTAIN JOHN A. STIPPS resumes stand;
sworn by Mr. Graf, redirect examination by Mr. Graf:

Q Captain Stipps, just going back for a moment to February 2nd, Sunday afternoon did you have some occasion at some point in the afternoon—did Mrs. Coolidge come to the station?

A Yes.

Q At approximately what time did she arrive at the station, if you recall?

A Around three or three-thirty.

Q At the station she talked with her husband?

A Yes.

Q As she was about to leave, you also talked with her?

A Yes.

Q You asked her general questions?

A I spoke to her for about—oh, maybe four or five minutes.

Q And you spoke to her about what was the substance of her conversation with her husband?

A I don't recall exactly, but we did talk in general about what she had told her husband and what he had told her.

Q You also asked her about the family situation—whether she and her husband got along well, and things of that nature?

A Yes.

Q Did you also inform her that she should answer all of your questions?

[fol. 99] A I do not recall making that statement.

Q You don't recall it?

A I don't; but I imagine that was the purpose of talking with her.

Q You told her that if she didn't answer your questions she could be held as an accessory?

A I might have said if she was aware of any crime he had committed, and it turned out that she knew, it might be a little different.

Q You told her that she might be charged with a crime if she didn't co-operate with you?

A I don't believe I threatened her that way.

Q But you did threaten her?

A No, I did not.

Q But you did talk with Mrs. Coolidge about the possibility of her getting into some trouble with the police if she didn't answer questions?

A I might have inferred it, but I do not recall the words.

Q Moving on a little bit in time and focusing your attention on the events of February 19th—that was the date of the arrest?

A Yes.

Q Do you recall what day of the week that was?

A No.

Q Perhaps it was a Wednesday?

[fol. 100] A It is possible.

Q But in any event, on that particular evening you and a number of other police officers arrived at the Coolidge house with an arrest warrant?

A Yes.

Q The complaint on that arrest warrant was drafted by whom?

A By the Attorney General's office.

Q That is, Mr. Maynard? Do you know whether or not he drafted it?

A I don't know.

Q But in any event, you arrived at 312 Seames Drive on the night of February 19th?

A Yes.

Q At about seven-thirty?

A Seven-thirty; maybe seven-forty.

Q In that vicinity, give or take a few minutes?

A Yes.

Q As a matter of fact, Assistant Chief Leavitt was with you?

A Yes.

Q You and Mr. Coolidge, Mr. Leavitt and other officers, returned to the police station?

A Yes.

Q You got to the station at about eight o'clock that evening? Is that correct?

A Yes.

[fol. 101] Q And it was the next day that Assistant Chief Leavitt returned to the Coolidge home with the search warrant?

A Yes.

Q And that would be on February 20th? Is that right?

A Yes.

Q Now, do you recall approximately what time on the 20th this search took place?

A It might have been in the morning.

Q Sometime after eight o'clock in the morning, perhaps?

A Yes.

Q Perhaps before noon?

A Yes.

Q And do you know whether or not prior to this time period, or February 20th, any search was conducted by any police officers at 312 Seames Drive?

A There was none.

Q So that this was the first search of the Coolidge premises, with warrants?

A Yes.

MR. GRAF: I have no further questions. Oh, just a minute please.

Q Just one other thing. On the night of the 19th, the night of the arrest, you and other officers took Mr. Coolidge to the station? Is that correct?

A Yes.

[fol. 102] Q What happened to Mrs. Coolidge during this time?

A She was driven to her sister's home in Windham.

Q As a matter of fact, as you were at the house Mrs. Coolidge was trying to pick up things for the baby, and other items of that nature?

A No.

Q She didn't pack some clothes to take with her?

A Not while I was there.

Q But in any event, she was out of the house almost immediately as well?

A I wouldn't say immediately, but some time later she went to Windham.

Q Within half an hour after you left, isn't it a fact that Mrs. Coolidge was out of the house also?

A It is possible.

Q It is also a fact that you left two officers there to guard the premises?

A Yes.

Q And also on this evening, you changed the locks on the Coolidge house?

A That evening?

Q Yes.

A No.

Q When were the locks changed?

A A day or two later.

[fol. 103] Q But within a day or so the police officers changed the locks at the Coolidge house?

A Yes.

Q There were two officers left at the house on the night of the 19th. Who were these officers?

MR. BUSSIÈRE: Your Honor please, we object to this.

THE COURT: What is the reason?

MR. BUSSIÈRE: He is just fishing. This has nothing to do with the issue before the Court.

THE COURT: Is this a serious objection? Do you really care?

MR. BUSSIÈRE: Well,—

THE COURT: I will rule whichever way you want me to, Brother Bussiere.

MR. MAYNARD: Your Honor—

THE COURT: Do you want to insist upon your objection?

MR. MAYNARD: I think it is a very good objection, Your Honor.

THE COURT: All right. Objection sustained.

MR. GRAF: My exception, Your Honor.

Q How long were these two police officers at 312 Seames Drive?

[fol. 104] A Maybe an hour or two.

Q Weren't the officers left at the house all the evening? Weren't the officers there all evening?

A They were ordered out of the house.

Q Who ordered them out of the house?

A Indirectly, yes. The attorney didn't want them in there so we took them out.

Q These officers were inside the house?

A Yes.

Q Were there also officers outside the house?

A Yes.

Q Did they remain there?

A Yes.

Q If I understand you correctly, the officers inside the house were, by you, ordered or asked to leave the premises?

A That is right.

Q But two officers were left outside the house?

A That is right.

Q And they were there all the evening?

A That is correct.

Q Were they there all day on the 20th?

A I don't believe so.

Q But some time on the 19th—

A I think in the morning they were relieved of their duties.

[fol. 105] Q Didn't you in fact order Mrs. Coolidge to leave the house?

A I did not.

Q Did you suggest that she leave the house?

A I did.

Q You suggested that she leave the house on that night. Did you bring a list of the items taken from the Coolidge house and cars, and so forth, on February 20th with you today?

A No.

MR. GRAF: It was my understanding that the list of items taken on February 2nd was to be produced today.

THE COURT: You didn't mean the 20th?

MR. GRAF: No.

MR. BUSSIERE: Your Honor, the State has inquired into the situation. I believe in the course of the hearing that will be cleared up.

MR. GRAF: We would still like an opportunity, and reserve our right, to look at the original lists. We would like to look at the original list.

MR. BUSSIERE: I don't believe that there is a list as such. There are reports of the various officers. One has not been referred to yet; but it will be cleared up in the course of the hearing.

[fol. 106] THE COURT: All right.

Q Captain, Inspector Glennon and Detective Sergeant McBain were at the Coolidge house on the evening of February 2nd?

A Yes.

Q There was police procedure at that time in regard to the Mason case to keep records of all activities which transpired, isn't that correct?

A Yes.

Q One of the facts involved would be—in these reports or records—to itemize all property discovered, found, picked up, taken—whether found in the house, cars or along the roadside? Isn't that a fact?

A Yes.

Q And these reports would indicate the items taken?

A Yes.

Q Do you know whether or not Detective Sergeant McBain's report or Inspector Glennon's report indicates the property taken from the Coolidge residence, the Coolidge Pontiac or the Coolidge Chevrolet on the evening of February 2nd?

A Yes.

Q Those reports do contain that information?

A Yes.

MR. GRAF: I would like to see the reports, Your Honor please, or the list in the reports. I am willing that [fol. 107] the Court look at it first.

THE COURT: My understanding is that Brother Bussiere does not agree with the witness' statement. He says that there is not a list of the items taken.

MR. BUSSIERE: Not a list as such. There is a report which shows things.

THE COURT: The report lists things taken?

MR. BUSSIERE: Yes, it does enumerate the items taken, Your Honor.

THE COURT: What?

MR. BUSSIERE: It does enumerate the items taken.

MR. GRAF: To eliminate any confusion, I would like to see the reports.

THE COURT: I don't believe there has been any confusion.

MR. BUSSIERE: I don't believe there has been any confusion. The only thing not yet referred to is a wool hat of some sort. The State's explanation will be that this was in the pocket of a coat which has been referred to.

THE COURT: I will reserve ruling at the present time. I understand that the State will put in some evidence on this, and we will go into it at that time.

MR. DEVINE: I would like to press the position of the defense that Captain Stipps should be required to give the names of the officers stationed at the house, either inside or outside, on the evening of February 20th. These officers had an opportunity to take items and to search, and I think we should be able to inquire into it.

THE COURT: I think you should be able to question whether or not they did take any items in the house after you know there is a list.

MR. MAYNARD: I didn't realize the relevancy before. If they want names, I think the captain may answer.

THE COURT: All right; the objection is withdrawn.

Q Would you tell me the names of the two officers who were situated inside the Coolidge house on February 19th?

A I assigned six officers to the detail. I would have to check the records to be sure. I think Inspector Jolin and Inspector Lord were assigned to the house inside, and they never did report that they had removed anything from the house.

[fol. 109] Q As far as you know, at least, they didn't report?

A Yes.

Q And the officers outside the house?

A Yes. The outside officers I think were Sergeant King—now Lieutenant King—and I don't recall the other officer, but there is a report to that effect—that they were stationed outside of the house.

Q Captain, do you have your records here? Would they reveal who the officers were outside the house?

A Yes. I don't have them here, but I can get them.

MR. BUSSIERE: Your Honor, the State will furnish the names of the officers stationed outside the house.

THE COURT: All right.

MR. GRAF: Fine! I would like to have them at this time, if Your Honor please.

THE COURT: What do you say?

MR. BUSSIERE: When counsel is through with Captain Stipps I will request Captain Stipps to immediately get that information for them.

THE COURT: All right.

Q Captain, one further thing. A 1963 Chevrolet and a 1954 Pontiac were taken on some evening in February. Isn't that correct?

[fol. 110] A Yes.

Q Or perhaps it was actually, on the morning of February 20th that these cars were taken?

A No. February 19th.

Q They were taken on the 19th—the evening of the arrest?

A Just after the arrest.

Q Who took those vehicles?

A They were towed to our garage by Hamel Auto Body, and each vehicle was followed by two officers.

Q Who were the two officers?

A There again I would have to check the record to be sure. I know one was guarded by Deputy Sheriff King of Exeter, Rockingham County, and Inspector Luther—now Lieutenant Luther—of our department.

Q They guarded one vehicle?

A Yes. I think they guarded the Pontiac. For the other I would have to check.

Q Deputy Kevin King and Lieutenant Luther guarded one automobile?

A Yes. From the time it left the house until they got it in at the station it was in their view at all times.

Q What time did they leave the house?

A I wouldn't recall the time. It would be in the vicinity of nine or nine-thirty, by the time the wrecker got in there to take them out, and they took them out one at a time, but they were in there some time before midnight. [fol. 111] Q Both vehicles were picked up and at the station some time before midnight?

A That is correct.

Q Which vehicle was taken first?

A I don't recall.

THE COURT: Are you looking for these?

MR. GRAF: I would like to look at the warrant, Your Honor.

Q Do you know whether or not there was a search warrant for these two vehicles?

A I believe there was.

Q Isn't it a fact—and I call your attention to Defendant's Exhibit C—it says, "Search, to wit, 1968 Chevrolet convertible". That isn't a search warrant for the Chevrolet—

MR. BUSSIERE: Objection. That is a question of law. Warrants were issued on the 19th for two vehicles. I don't believe that is a proper question in view of the facts which have been developed up to this point.

MR. GRAF: I don't believe the search warrants included the vehicles.

MR. BUSSIERE: That is a question of law—whether or not the State has authority to take the vehicles which it has a warrant to search.

[fol. 112] Q Captain, just talking generally about the search warrant, approximately fifteen items are enumerated in each search warrant, isn't that correct? A number of items anyway?

A Yes.

Q And all of these items—you expected to find them in either car?

A It is possible.

Q Or in the house?

A It is possible.

Q Or in the laundermat?

A It is possible.

Q So it is fair to say to say you didn't really know where anything was; you were just looking around in the best place possible?

A We were looking for certain items.

Q And you were looking for certain items in all four places?

MR. MAYNARD: I don't think it is material whether he expected to find them or didn't expect to find them at any one place.

THE COURT: I think that is a question which might more properly be directed to the person who applied for the search warrants.

MR. BUSSIÈRE: It is my understanding that the Court had ruled or did rule in so far as the warrants were concerned that no further testimony would be taken [fol. 113] to go behind them at this time.

THE COURT: I thought I had ruled in your favor.

MR. DEVINE: May it please the Court, that ruling was not made on the record, and I would like to have my exception saved to such a ruling.

THE COURT: I will rule at this time then that there will be no going behind the search warrants. This also refers to the State. The State is bound by the search warrants on their face, and in the event of any admission or execution or evidence, the State may not rely on anything not in the search warrants on their face.

MR. BUSSIÈRE: As I explained in Chambers, the question was whether or not the ruling—

THE COURT: The ruling was made at the request of the State, and it is my understanding that the State wishes to rely firmly on the faces of the search warrants at the present time.

MR. MAYNARD: I am not sure just exactly what the ruling comprehends.

THE COURT: My understanding is that at the re-[fol. 114] quest of the State—and if I am wrong, you may so inform me—the State has requested that this hearing be limited to the search warrants on their face, and that no evidence beyond them should be admitted as to how they were obtained, other than what appears on the search warrant itself.

MR. MAYNARD: Testimony would be as to what appears on the search warrant itself or its face, and refers to evidence offered to the magistrate who issued the search warrant, and I would assume when you say they are limited to the face, you are including the language of the warrant which says, "and evidence offered in support thereof".

THE COURT: Is it your assertion that evidence will be introduced that there was a record made and actual evidence taken prior to the issuance of the search warrant?

MR. MAYNARD: I can't say a record was made, but there was evidence offered.

THE COURT: In the form of an affidavit?

MR. MAYNARD: No; not in the form of an affidavit.

[fol. 115] THE COURT: Was it sworn testimony?

MR. MAYNARD: No, it was not. The Chief swore, in making this application, that there was evidence thereof. I think Your Honor's ruling is right; it goes to the face of the warrant just the same, but there was other evidence.

THE COURT: My only point is, if my understanding of the ruling is correct you stand or fall at the present time upon the warrants on their face, and you might not urge on an appeal that there was evidence beyond what would appear on the face of your warrant, other than you might, of course, assert that evidence was indicated to you orally when issuing the warrants.

MR. MAYNARD: I think with that statement we are correct.

MR. DEVINE: I am not sure that I understand the State's position. Do they take the position that they can go beyond what appears on the warrant in this court but we are not allowed to go beyond what appears on the warrant in this court?

[fol. 116] THE COURT: That is not my understanding at this time. These warrants are unusual. At least, they are not similar to the one in this opinion, which is giving some trouble, in that they contain no affidavit. Am I correct on that?

MR. MAYNARD: That is correct; that is not to the effect an affidavit is given in the federal service.

THE COURT: And in most states—apparently even in Texas.

MR. MAYNARD: I am not so familiar with the rulings in other states.

THE COURT: All right.

Q Captain, I think you said that searches were conducted pursuant to these warrants on February 20th? Is that correct?

A The warrants were issued February 20th, or the search was conducted February 20th? Is that the question?

Q Yes.

A Yes.

Q Does that mean the search of the vehicles was conducted on the 20th?

A That I can't say. The return would tell you what date.

Q Referring to Defendant's Exhibit B, which is search [fol. 117] warrant 7298-C, directed to a 1951 Pontiac, what is the date on the return on that?

A February 21, 1964.

Q Would it be your opinion that perhaps this search was conducted on the 21st?

A Yes.

Q Calling your attention to Defendant's Exhibit C, which is warrant 7298-D, and is directed to a 1963 Chevrolet convertible, what is the date of the return on that?

A February 21, 1964.

Q Atain it is your best recollection that this search would have been conducted on February 21st, 1964?

A Yes.

Q While we are at it, why don't we go to the other two warrants again. Defendant's Exhibit A is a warrant—

MR. BUSSIÈRE: I object, if he is going to go through every warrant at this time. It seems to me that they speak for themselves.

MR. GRAF: I was under some miscomprehension with the subject. The vehicles were picked up on the 19th and I was inquiring as to the time the search was conducted. If you represent that the search was conducted on the date of the return, I would be satisfied.

[fol. 118] MR. MAYNARD: I am not sure. The witness says he doesn't know, and I don't know either.

THE COURT: Gentlemen, it would be very helpful to the stenographer—from both sides—if one person would speak for the prosecution and one for the defense, if possible, because as you know, the stenographer has to write each name down when you speak and she isn't always looking at you.

Q As far as the house and the laundermat are concerned, is it your best recollection that they were search on the 20th?

A Yes.

MR. GRAF: No further questions.

MR. MAYNARD: We have no questions, but we may, Your Honor, wish to call him back. We haven't determined at this point of the evidence.

THE COURT: All right.

MR. GRAF: Thank you, Captain. That is all I have.

MR. REYNOLDS: I would like to call Mr. Leavitt.

[fol. 119]

TESTIMONY OF
NORMAN W. LEAVITT

Sworn by Mr. Reynolds; direct examination by Mr. Reynolds:

Q May I have your name, please?

A Norman W. Leavitt.

Q Your position with the Manchester Police Department?

A Assistant Chief.

Q You have been in that capacity since January?

A Of this year, yes.

Q In regard to the investigation of the Mason case, you were assigned—you were working on that case?

A Yes, sir.

Q In the course of it you received certain search warrants?

A Yes, sir.

Q From whom?

A The Attorney General's office.

Q Well, that is the Attorney General directed you to go to various locales and try to find certain items enumerated? Isn't that right?

A Yes, sir.

Q Now, all of the items that you were looking for are identically listed in all of the warrants? Isn't that right?

A These are the returns here.

Q Let me put it this way. In Exhibit A, this is a search warrant seeking certain items where?

[fol. 120] THE COURT: I think it states, to the left.

A The Laundermat, at 712 Valley Street in Manchester.

Q Now, you were in charge of this search, looking for these items at the Laundermat?

A Yes, sir.

Q You made that search when?

A The forenoon of Thursday, February 20th.

Q And as required, you filed an inventory as to what you did obtain?

A Yes.

Q This is your signature—Norman W. Leavitt?

A Yes.

Q In this inventory you list three items?

A Yes, sir.

Q None of these items are enumerated on the list of items to be obtained through the search warrant?

A Not as such.

Q All right. Now, the next search warrant inventory is also signed by you. This is for a search of what premises?

A The Coolidge house at 312 Seames Drive in Manchester.

Q Referring to Defendant's Exhibit D, you conducted that search?

A With others; yes, sir.

Q You signed the officer's return and inventory?

A Yes.

Q The search was made when?

[fol. 121] A After noontime. I believe it was in the vicinity of two p.m., on Thursday, February 20th.

Q How long did that search take place?

A Approximately two hours, I would say.

Q Was there at any time a subsequent search conducted of these premises?

A I did not conduct a subsequent search, but I know there was one made.

Q Now, on your search of the house you inventoried four items, is that right?

A Yes, sir.

Q Now, are any of the four items itemized in the search warrant as items that you were looking for?

A Specifically as such, no.

Q Now showing you Defendant's Exhibit B—that is a search warrant to search a 1951 Pontiac? Is that correct?

A Yes, sir.

Q A search was made for the same items as in the other search warrants, under your direction?

A Let me read it, please.

Q I am sorry. You can compare them.

A My last statement with reference to the search of the house at 312 Seames Drive—I would like to correct my answer. One item is listed, which includes debris which we did take, and which we listed in the inventory. [fol. 122] THE COURT: Do you want to answer the last question now? He asked you if the list was the same as you were looking for in the other two search warrants.

WITNESS: Yes, sir.

Q And this was the search warrant, Defendant's Exhibit B, of the 1951 Pontiac?

A Yes.

Q And the search was made for these same items, under your charge?

A Yes.

Q And that search was conducted when?

A Friday, February 21st, in the afternoon.

Q Where was the search made?

A At the police garage in Manchester.

Q That search took how long?

A Approximately four hours.

Q That also was conducted by yourself?

A Yes; myself and Inspector Roger Beaudoin of the Manchester Police Laboratory.

Q To your knowledge was a subsequent search made, other than on that day or on that afternoon, of that vehicle?

A I did not make one subsequent to that search. No, sir.

Q Do you know if the examination of this car continued?

A I understand that there was another examination made subsequent to this one.

[fol. 123] Q Again, when you examined this 1951 Pontiac, you filed an inventory of what items you took?

A Yes.

Q Two items, so to speak?

A Yes, in general.

Q Vacuum sweepings, and a piece of fibre?

A Yes.

Q Were any of these items listed in your search warrant?

A Yes. Yes, under the next to the last item, under "debris".

Q This item is "work shop debris". Do you mean to say your inventory of vacuum cleaner sweepings from the floor mat and trunk may be considered as—

A In the sense that work shop debris could be tracked from the shop into the car with other debris.

Q If it had actually been work shop debris, you would have said "work shop debris", wouldn't you?

A In examining vacuum sweepings, it is impossible to say what is work shop debris, road debris, or house debris.

Q It says on the search warrant, "Work shop debris, including but not limited to wood shavings, metal shavings and brass filings". Did you in your inventory make any reference to wood shavings, metal shavings or brass filings?

A No, but it is impossible to determine with the naked eye what the vacuum cleaner contained, individually.

Q Do you know whether or not the vacuum sweepings [fol. 124] contained metal shavings? Or do you have no idea?

MR. MAYNARD: I object, unless he is asking at the time he made the search.

A At the time we made the search the vacuum sweepings were an accumulation of debris. The only specific item noted in the vacuum debris in this car was a single live round of twenty-two calibre ammunition. Because of its weight and condition, it wouldn't stay in the vacuum trap.

Q You didn't indicate any shell or bullet here?

A That is included in the vacuum sweepings.

Q So in this inventory of vacuum sweepings, you include a bullet or shell?

A It came up with the vacuum sweepings, and I know of my own knowledge that it came up with the vacuum sweepings.

Q Why didn't you inventory the bullet as such?

A Only because it was part of the vacuum sweepings, and I inventoried it as such.

Q And you felt that vacuum sweepings were in general workshop debris—under that general category?

MR. MAYNARD: I object, unless he is referring to the time of the making of the inventory.

MR. REYNOLDS: I never said at any other time.

A In my opinion, these vacuum sweepings which [fol. 125] came up could contain workshop debris, house debris, or any number of different kinds of debris, all deposited on the floor mats of this particular car.

Q Well, you understand what we are doing here is getting a list of the items taken under a search warrant, and items not taken under a search warrant. The State has furnished us with a list of the items taken without a search warrant, so it is fair to add to that list a shell from the back seat of the vehicle?

MR. MAYNARD: Just a minute. We added that yesterday, I believe.

THE COURT: I don't believe these are quite the same shells.

MR. REYNOLDS: No; yesterday it was shells from the glove compartment, which were in a box.

THE COURT: I may be confused, but I think this is not the same shell which was listed in your list yesterday.

MR. KALINSKI: I don't believe there is any confusion. We stated in open court yesterday that we had this shell included in the vacuum sweepings.

THE COURT: Let me see the letter which was marked as an exhibit.

MR. KALINSKI: It is not in the letter; it is part of the return on the search warrant.

[fol. 126] THE COURT: I think that is correct; I think he said there was a live shell.

MR. REYNOLDS: Now he says there was three.

MR. KALINSKI: I don't know whether it is two or three, but whatever it was it was included in the return of the search warrant.

MR. BUSSIERE: I think I said in the vacuum sweepings there were other things, including live rounds of ammunition.

THE COURT: I think at some yesterday somebody did refer to live rounds of ammunition picked up with vacuum sweepings.

Q We are still talking now of the search of the 1951 Pontiac. The vacuum sweepings included—was it a live round or spent round?

THE COURT: He said live round.

A Yes. Live round.

Q Was there more than one live round?

A Not that I saw at the time, no.

Q Was there anything else other than ammunition picked up with the vacuum sweepings?

A Yes. There were pieces of rubber matting—where the mat was old and deteriorated. I could see that go into the trap. I could see flakes of rusted metal going into the trap, but I didn't itemize them and differentiate [fol. 127] on the return of the warrant to set out different things included in the vacuum sweepings, any more

than I did with the live rounds of ammunition. I could see things go into the trap, but I didn't itemize them as such.

Q At some time the vacuum sweepings were broken down to analyze what was what? In other words, one was a bullet, this was this and that was that?

MR. MAYNARD: I object.

THE COURT: I think as a general question it may stand; beyond that, that would be as far as I would allow you to go. I assume the answer would be "Yes"?

A Yes. That was the purpose of taking the vacuum sweepings.

MR. REYNOLDS: My reason was, I don't believe that the inventory particularized very much.

THE COURT: I understand.

Q On this inventory then of the Pontiac, you say the vacuum sweepings covered workshop debris, but these other items are not listed in the items to be obtained? Isn't that right?

A Not as such, but I think there is a reference to it somewhere here—under this term, the word "Blood"—items which appeared with stains on them, which in my opinion could possibly have been blood, were retained for examination.

Q Pieces of fibre insulation from left front floor mat [fol. 128] with reddish stain you felt was covered then by the word "blood"?

A Yes, I think so.

Q Now Defendant's Exhibit C was a search warrant of the 1963 Chevrolet convertible?

A Yes.

Q And the items to be searched for are the same as the items sought for in the Pontiac, the house and the laundermat?

A Yes. The list is identical.

Q And in the search warrant of the 1963 convertible—does your inventory of these three items list anything which you asked for in the search warrant?

A Yes, sir; under the same statement I made relative to the vacuum sweepings.

Q Being the same idea—vacuum sweepings being the same idea as workshop debris?

A Yes.

Q "Carborundum honing stone with reddish stains, boxed". Is that related to any of the items you were looking for?

A Yes; under this item, "blood".

Q I see. Because of the reddish stain?

A Yes.

Q "Yellow towel, stained"?

A By the same token, under the single word, "blood".

Q Do you mean this was stained with a reddish color which you thought might be blood?

[fol. 129] A Yes.

Q When was the search made of the 1963 Chevrolet, and where?

A In the Manchester Police Station garage, in the forenoon of Friday, February 21st, in the presence of William Craig, Jr., Attorney.

Q That vehicle was later returned to Mrs. Coolidge?

A No. Prior to the noon hour we turned the vehicle over to William Craig, Jr., who drove it off.

Q By the way, were you in charge of the search on the search warrants in regard to the Pamela Mason case?

A Yes, I was in charge of all the warrants on which my name appears.

Q And at no time did you ever have a warrant to take any motor vehicle, did you?

MR. MAYNARD: I think that is a question of law. Those are the warrants which he had.

THE COURT: These are all the warrants which the State—

MR. MAYNARD: Those are all the warrants, plus a warrant for magazines, books and so forth.

MR. REYNOLDS: There was no specific warrant to take the two cars—the Chevrolet and the Pontiac.

THE COURT: I believe your statement is there were [fol. 130] no search warrants other than those which are before the Court?

MR. MAYNARD: That is correct.

MR. REYNOLDS: No more questions, thank you.

MR. MAYNARD: We have no questions at this time.

MR. DEVINE: Mrs. Joanne Coolidge.

TESTIMONY OF MRS. JOANNE COOLIDGE

Sworn to Mr. Devine; direct examination by Mr. Devine.

Q Please keep your voice up, so that we all can hear you, Joanne. What is your name?

A Joanne Coolidge.

Q How old are you, Joanne?

A Twenty-seven.

Q You are Ed Coolidge's wife?

A That is right.

Q When were you and Ed married?

A January 15th, 1961.

Q Do you have any children?

A Yes, we have one daughter.

Q How old is she?

A She is two.

[fol. 131] Q Referring, Joanne, back to the events of February 2nd, 1964, which was a Sunday—the day Ed went to the station. Do you recall that day?

A Yes.

Q What was the first indication you had that day that Ed was going to the station for questioning?

A A 'phone call early in the morning.

Q About what time did they call?

A About eight.

Q Who was the call for?

A For Edward.

Q Was it from the police station?

A I believe so.

Q Did he tell you that they had asked him to come up for questioning?

A Yes.

Q What time did they ask him to come?

A About one.

Q Did he go to the station about one?

A Yes, he did.

Q Where did you go while he went to the station?

A I stayed at my mother's and had dinner. Then I was going home, to my home at 312 Seames Drive.

Q Did you stop at the station to pick up the keys to the house?

A Yes, I did.

[fol. 132] Q Did somebody go below and get the keys to your house?

A Yes.

Q Did you see Ed at that time?

A No, I didn't.

Q Some time later did you see Ed at the station?

A Yes.

Q What were the circumstances?

A After the baby was asleep, I was doing the dishes. Two officers came to the house and told me that Edward wanted to see me at the station.

Q What time was that?

A Between three and three-thirty.

THE COURT: We will take a five minute recess while the bells are ringing.

(Recess 12:00 to 12:05 noon)

Q Please keep your voice up. I am standing back so if I can hear you everybody can. About three to three-thirty, as I understand, two police officers came to your home, on Sunday, February 2nd, and said that Ed would like to see you at the station?

A Yes.

Q Did you recognize the officers?

A No.

Q Were they in uniform or plain clothes?

[fol. 133] A In plain clothes.

Q Did you accompany them to the station?

A Yes.

Q Tell us what happened then.

A I was lead upstairs, I believe to the third floor, and I was allowed to see Edward.

Q How long did you see him?

A About five minutes.

Q Then what happened?

A I was asked if I knew my way out. I said, "Yes". One officer said he would take me downstairs. When I got downstairs, he asked me to wait in a room because Captain Stipps wanted to speak with me.

Q That was on the second floor?

A Yes.

Q Did Captain Stipps speak with you?

A Yes, he did.

Q Tell us about your conversation with Captain Stipps?

A Captain Stipps asked me my name, and my maiden name. Then he wanted to know what Edward had told me upstairs. I told him it was just plain conversation; it was nothing concerning any case or anything—just concern over me and the baby.

Q What did he say then?

A Then he asked—oh, something about if Edward and I were compatible. I said, "Yes". He said, "Why, if [fol. 134] you have been married three years do you have only one child?"

(Witness weeps)

THE COURT: Why don't you sit down? You had better bring her a glass of water.

MR. DEVINE: Do you think you can go on now?

WITNESS: I think so. I am sorry.

MR. DEVINE: All right.

A (Continuing) Then he asked me if Edward had any other girl friends. I said, "No". He said he knew for certain that he did. I said I didn't believe that, because I knew my husband. Then he went back to what Edward had talked to me about upstairs, and if I withheld any information he could give me a prison sentence, and things like that; and after he let me go.

Q What effect did this questioning and threatening have on you?

A I was very nervous. I could just barely drive home.

Q When you got to your home, who was there?

A My mother-in-law.

Q That is Edward's mother—Mrs. Coolidge, Sr.?

A Yes.

Q I understand that sometime later that night—I believe Sergeant McBain and Inspector Glennon, who you heard yesterday, said at about ten-thirty they went to your house?

A Yes.

[fol. 135] Q Do you recall that?

A Yes.

Q Were they in uniform or in plain clothes?

A Plain clothes.

Q Was your mother-in-law there at that time?

A Yes.

Q Did they identify themselves as police officers?

A Yes.

Q You let them into the house?

A Yes, I did.

Q Tell us what they talked about at the beginning. Did you ask about your husband and where he was?

A Yes, I did. When they came in and were seated in the living room, they just asked my name and where I went to school, and things like that. Then they had asked my mother-in-law to leave. I asked them if Edward was coming home. They said, "No, he was in serious trouble." He didn't state what it was. They told me grand larceny. That is the first I knew about that.

Q They told you that he was charged with taking money from Cote Brothers?

A Yes.

Q Did they ask to see a washing machine, or anything like that, in your house?

A No, they didn't.

[fol. 136] Q What else did they ask you about?

A They asked if Ed had any rifles, and I said, "Yes, he does." Then I asked if they would like to see them, and they said, "Yes". I said, "I will get them", and they said, "We will come with you."

Q Where was this conversation?

A In the living room.

Q It was Inspector Glennon, Detective Sergeant McBain and yourself?

A Yes.

Q Your mother-in-law had left?

A Yes.

Q When they said they would go with you, where were you going to get the weapons?

A To my bedroom.

Q Did you get them?

A Yes.

Q Did you go to your room?

A Yes.

Q Did they follow you to your room?

A Yes.

Q Did you invite them to follow you to your room?

A No. I intended to bring them to the living room.

Q Tell us what happened in the bedroom.

A I got the guns out for them.

[fol. 137] Q Where were they kept?

A In the closet.

Q In the bedroom?

A Yes. I got the guns out and they checked them. Then they asked what Edward was wearing that night.

Q Did they tell you that they were going around and checking out firearms and any suspects that they had in the Mason case?

A No.

Q And did they tell you that you didn't have to give them these weapons unless you wanted to?

A No; I felt that I had to.

Q Did they tell you that your husband had given them permission to come over there?

A No; they never said anything.

Q Or to take the weapons? Is that right?

A Yes.

Q You say they asked you what he was wearing that night?

A Yes.

THE COURT: What night is being referred to now?

MR. DEVINE: Yes, Your Honor.

Q What night were they referring to?

A January 13th.

Q That is the night the Mason girl disappeared?

[fol. 138] A Yes. I had the four pair of trousers folded. They were on—I forget what you call it—the hamper. They were on top of the hamper. I put them on the bed, and they opened the four pair of trousers—

Q Were these work trousers?

A Yes.

Q Trousers which Ed wore when he worked at the Cote Baker?

A Yes, they were issued from Cote Brothers. I suggested it might have been one or two pair—according to how they were in the pile. They checked these two more closely and they decided to take one.

Q Did they ask if these garments had been cleaned since January 13th?

A Yes, they did.

Q What did you say?

A I said I waited until I accumulated five or six pair and then would take them to the cleaners, and it was one-day service.

Q Did they take any of the trousers?

A Yes, they took one.

Q Did they say anything when they took them?

A They said, "We will take this pair."

Q Did they ask anything about the cars?

A Yes, they asked if they could check the vehicles, and I said, "Where?"

Q One was a Chevrolet and one was a Pontiac?

[fol. 139] A Yes.

Q Where were they at that time?

A They were in the driveway.

Q Tell us what happened.

A I went to the kitchen and got the keys to the cars and gave them the keys, and they went out.

Q Did you go out with them?

A No, I didn't.

Q Did you watch what they were doing?

A No. I went back to the living room and tried to clean up a little bit. I did glance out the kitchen window at one time to see if they had left.

Q How long were they there?

A I would say fifteen minutes or so.

Q Then what happened?

A One came back with the keys, and then they left.

Q Do you recognize which one of them came back with the keys?

A I believe it was Officer McBain.

Q Did they say anything about taking anything from the vehicles?

A No. He said nothing about removing anything from the vehicles.

Q Did you know whether or not they had taken anything from the vehicles?

A No,—only what they said here. That is the first I knew about it.

[fol. 140] Q Do you mean that yesterday is the first time you knew that anything was taken from the cars?

A Yes.

Q They didn't ask your permission to take anything?

A No.

Q Now, one of the officers—and I believe it was Inspector Glennon—gave you a receipt for the four guns, one red jacket and a pair of uniform trousers, which has been marked as Defendant's Exhibit H. Is that correct?

A That is right.

Q This receipt doesn't list anything as having been taken from those vehicles? Is that correct?

A That is correct.

Q And you say that they didn't inform you or ask your permission to take those things?

A No.

Q On the night of February 19th were you at home when the police arrived?

A Yes.

Q With the arrest warrant for your husband?

A Yes.

Q About what time of the night was that?

A Between seven-thirty and eight.

Q What did the police tell you at that time?

A I believe Captain Stipps was talking mainly with [fol. 141] Edward. He told me to go in the living room and get out of their way. I tried to go out in the kitchen,

and he told me to go back in the living room. Then he came in and told me that they were arresting Edward.

Q Did he tell you to get out of the house?

A No, he didn't. He left with Edward, and there was about four or five left in the house with me. Captain Stipps did mention that it would be best if I left the house, and I didn't want to. Then the other—I don't know who it was—said, "We have made reservations at a motel for you." I says, "Well, if I have to leave I won't go to a motel." Then I tried to get my sister. That is when I went down to Windham.

Q You went down to Windham with your baby?

A Yes.

Q After packing a few clothes?

A Yes. I was going to take my own car. Someone said that I couldn't take my own car, that they were both empounded.

Q Who took you to Windham?

A Two policemen. They were plain clothes men.

Q When did you go back to the house?

A I believe two days later, or a day and a half later. I needed clothes. I hadn't taken anything for myself—just a few things for the baby.

Q When you went back were you able to get into the house?

[fol. 142] A No. The locks were changed.

Q Were there officers there?

A No.

Q How did you get in the house?

A I called up Bill Craig. He went to the station and got me a key, and I was allowed to go into the house and get a few more clothes.

Q When you went into the house after you got the key to the new lock, what was the condition of the house inside?

A Everything was left in a jumble, like when I left the house; but when I went into my drawers, it was a mess.

Q It was obvious that the house had been searched, was it?

A Yes. My dresser—I didn't go into Eddie's—I was just concerned with getting my own clothes, and—My God!

MR. DEVINE: Thank you, Joanne. I have no further questions. These gentlemen may want to ask you some questions.

MR. MAYNARD: We would like just a moment, Your Honor.

THE COURT: You may be seated.

WITNESS: Thank you.

CROSS EXAMINATION BY MR. MAYNARD:

Q Mrs. Coolidge, do you remember the evening of January 13th?

A Yes.

Q You recall the night of the storm—the night the [fol. 143] Mason girl disappeared?

A Yes.

Q Were you at home that evening?

A Yes.

Q Had you been at home all afternoon?

A Yes.

MR. DEVINE: May it please the Court, I don't see the relevancy of this testimony on this particular issue. It is not within the scope of my direct examination.

THE COURT: I have a little question about it.

MR. MAYNARD: I think the relevancy may appear if I am allowed to continue.

MR. DEVINE: May I request that my brother make an offer of proof at the bench before proceeding with this line of questions, Your Honor please?

THE COURT: Yes; I think that might be well.

AT THE BENCH:

MR. MAYNARD: I am going to offer some evidence on the credibility of the witness here. To do that I am going to show what she knew of the case and what she [fol. 144] knew of an alibi or alibis which were attempted to be established by herself as well as by Mr. Coolidge.

THE COURT: I don't follow you.

MR. MAYNARD: I am going to show by this witness that she was home on the evening of the 13th of

January, the night this girl disappeared, and that Mr. Coolidge, through her, attempted to establish an alibi to the effect the he also was home that evening during the time the girl disappeared from home, when in fact I think she testified he wasn't home; also she went to a neighbor to get her to testify that he was home, to confirm her alibi, and later decided she wouldn't press it as an alibi. This refers to Captain Stipps' testimony that he told her if she had evidence she shouldn't withhold it.

MR. DEVINE: If it is offered on credibility, you have to lay a foundation first. I ask Brother Maynard if he contends anything which she said on direct examination is not true. I say it corroborates what all the witnesses have said.

MR. MAYNARD: I think most of the things she says are in line with what the State's witnesses have said, [fol. 145] but some things she disagrees on—namely that they took a set of cartridges and the fact she didn't say they looked at and checked the guns. She says she didn't do it. They say she did. And she is the wife of the respondent.

THE COURT: I guess we will adjourn at this point until two o'clock.

(Recess 12:30 to 2:00 p.m.)

MR. DEVINE: Your Honor please, when we recessed for lunch I think there was a question pending, and an objection.

THE COURT: I will exclude it.

MR. MAYNARD: May the record, Your Honor please, show my exception, if it avails me?

THE COURT: All right.

Q Mrs. Coolidge, on January 28th some officers came to the house when your husband was there, did they not?

A Yes.

Q Do you know who the officers were who came to the house that day?

A I don't recall.

Q When they came to the house did they talk with you, at that time?

A No.

[fol. 146] Q You had no conversation with them?

A No.

Q They talked, however, with your husband, Edward Coolidge?

A Yes.

Q Were you present during the conversation with Edward Coolidge?

A Off and on. The baby was sick. I was trying to keep her quiet, and she was in and out between the kitchen and the living room.

Q At any time on this January 28th do you recall whether or not your husband brought out some guns for the police to see?

A Yes.

Q Do you know how he happened to bring them out?

A No, I don't.

Q Do you remember any conversation at all about the guns?

A No.

Q Do you remember how many guns your husband brought out for the policemen to see?

A I believe he brought them all out before.

Q Are you interested in firearms yourself?

A No.

Q Do you know enough about firearms so that you can distinguish between shotguns and rifles?

A No; only if I see a bullet, I guess. I know one has a larger bullet, but I couldn't tell you which one goes to which gun.

[fol. 147] Q You don't recall any conversation between your husband and the officers about these guns?

A No, sir; not that I can recall.

Q Will you tell us what conversation there was on February 2nd about the guns?

A Well,—

MR. MAYNARD: Strike the question.

Q On February 2nd the guns were again displayed to the police officers?

A Yes, that evening—late that evening.

Q Yes, late that evening when you were at home with your mother-in-law and the policemen came?

A My mother-in-law was gone at that time.

Q Yes, but that same evening, after your mother-in-law was gone, the guns were again produced?

A That is right.

Q And I suppose you know they were the same guns?

A They asked if we had any firearms in the house. I guess they called them guns or rifles. I said, "Yes". I said, "I will get them in the bedroom", and they said, "We will come with you."

Q Do you recall if both police officers went in with you?

A Yes.

Q Where were they?

A In the closet.

[fol. 148] Q In the closet in the bedroom?

A Yes.

Q Is this the same closet where the hunting jacket was hanging?

A No. The hunting jacket was hanging in the hall closet.

Q Did you go with them to get the hunting jacket?

A The way they were standing, the door to the closet in the hallway was opposite the bedroom. I think they stood in the bedroom and I reached to the hall closet and got the jacket.

Q Do you recall if there was a toque or cap in the pocket of the jacket?

A I don't know.

Q There was a group of trousers, and of the bunch of trousers they took one pair?

A Yes.

Q Where were the trousers?

A Right beside the door there is a small space and I have a hamper there, and on the hamper I kept the clothes that are going to the cleaners.

Q Is that the door in the hall?

A No; it is the door going out into the hall from the bedroom.

Q Is that about where they were standing?

A In fact, I think that I had to ask one of them to move, or they moved, because it was right there.

Q You say there were four pair of trousers?
[fol. 149] A I believe there were four.

Q And they selected one pair of the four?

A Yes.

Q What actually did they say about taking them?

A Well, they checked them over and they said, "We will take this pair."

Q What did they actually say about taking the guns?

A I believe I asked if they wanted the guns. One gentleman said, "No"; then the other gentleman turned around and said, "We might as well take them." I said, "If you would like them, you may take them."

Q Did you go further and say, "We have nothing to hide."?

A I can't recall if I said that then or before. I don't recall.

Q But at some time you indicated to them that as far as you were concerned you had nothing to hide, and they might take what they wanted?

A That was it.

Q Would you say that is so?

A I believe so.

Q There was some talk about your being in a highly nervous state that evening. You made coffee for the officers, didn't you?

A Mainly for myself.

Q Did you feel at that time that you had something to hide?

A No.

[fol. 150] THE COURT: Brother Maynard, why don't you stop for just a minute.—You may sit down, Ma'am.

WITNESS: I am sorry.

THE COURT: Would you like to have the last question read?

MR. MAYNARD: I don't believe I care to have it read, Your Honor.

THE COURT: Was it answered?

STENOGRAPHER: Yes, it was.

THE COURT: All right.

Q At that time you felt you had nothing to hide from the police officers?

A That is right.

MR. DEVINE: May I ask what time he refers to, Your Honor.

THE COURT: I understand it was February 2nd, in the evening when the two police officers were there.

WITNESS: That is right.

THE COURT: Your answer was, "Yes"?

WITNESS: Yes.

Q In fact, at that time if you could clear your husband of any charge you were anxious to do it, weren't you?

A Yes.

[fol. 151] Q Captain Stipps, that afternoon, I believe you implied, suggested to you in one manner or another that you should co-operate with the police, didn't he?

A He told me I should co-operate with the police, and if I didn't I could be sent to prison.

Q And at some time prior to that night you had thought in your own mind about furnishing an alibi for your husband, hadn't you?

A No.

MR. DEVINE: If the Court please, I object to that question. It is a collateral issue, for one thing.

MR. MAYNARD: It is offered on her state of mind.

MR. DEVINE: I don't believe it has any bearing on her state of mind some time later, Your Honor.

THE COURT: I will sustain the objection to the question in its present form.

Q On the night of February 2nd when the two police officers were there, had you decided in your own mind that you should tell the police officers the truth?

A I told them the truth to every question that they asked.

Q You did that truthfully, didn't you? You intended [fol. 152] to tell them the truth that night?

A Yes. I was brought up to tell the truth.

Q But several days earlier than that you had different thoughts in your mind, didn't you?

MR. DEVINE: Same objection, Your Honor please.

THE COURT: She may answer.

MR. DEVINE: May I have an exception, please?

THE COURT: Yes.

A I was not asked that question directly.

Q I am not suggesting that you didn't tell the truth, but didn't you have in your mind that you were going to tell a falsehood a few days earlier?

A Yes, I did.

Q But by February 2nd you had formed the intention in your mind to tell the truth, and you were prepared to and you did tell the truth?

A Yes

Q But sometime before February 2nd you had given consideration to lying or giving a false statement to help your husband? You had given some thought to that before, hadn't you?

A About telling the truth? I don't—.

Q About telling the truth.

MR. DEVINE: If the Court please, I don't think that [fol. 153] question is intelligible. I think my brother should rephrase it.

MR. MAYNARD: I will be glad to.

Q Sometime before February 2nd—before the night you told the policemen the truth, you had given consideration to telling a lie about your husband, hadn't you?

A I don't quite understand the question.

Q Would you tell us what conversation you had with Mrs. Mayhew about what you would like to have her say?

MR. DEVINE: This is a completely collateral issue, and I object to it, Your Honor please.

THE COURT: I thought she had already answered the question some time ago—not quite the way she appears to be answering it now. I am inclined to think in part now that it was because she didn't understand it. Previously, when you asked the question, she agreed that you were correct, if I understood her correctly.

MR. MAYNARD: That may be so. Perhaps I have gone into it too far, and I would like to clarify it.

MR. DEVINE: I don't believe there is any testimony relative to Mrs. Mayhew.

[fol. 154] THE COURT: No, but I do think she did testify that some time prior she had considered telling a

lie to protect her husband. There is nothing you are going to put in now that would contradict what she has said?

MR. MAYNARD: Very well, Your Honor. Let me ask this question,—and if you will, pause before you answer.

Q What caused you to change your mind about the thought of lying?

A Nothing changed my mind. I knew my husband was innocent and he can be proved innocent with the truth; that is why I told the truth.

Q What Captain Stipps said to you about telling the truth didn't influence you in any way?

A Pardon?

Q What Captain Stipps said to you about telling the truth—that didn't influence you in any way?

A I don't know if I had—I don't know if I could think that far back. I was so nervous and upset then. I don't know if it was on my mind or not.

Q Well, you were not nervous and upset because you were going to tell the truth, were you?

A I am just nervous if any police officer walked up to me.

Q Were you nervous when your husband was home, too, and the police officers were there?

[fol. 155] A Yes, I was.

Q Now, are there any articles which belong to you or to your husband that are missing that you think have been taken, other than what have been read here on the search warrants and talked over here? Are you aware of some other items which are missing?

A No, I can't tell, because when I moved out of the house I didn't pack the things. That is why I can't tell, unless I go through all my articles, and they are still packed in boxes.

Q Do you have some reason to suspect that some items are missing?

A I don't know.

MR. DEVINE: If she knows.

WITNESS: I don't know.

Q You don't know of anything that is missing?

A No, I don't.

Q When you left the house on February 19th, you went down to your sister's?

A That is right.

Q And you went down in the company of two police officers?

A Yes.

Q Do you know their names?

A I am sorry. I don't.

Q You were, of course, nervous that evening?

A Yes, I was.

[fol. 156] Q When you got down to your sister's, did the police officers stay there?

A Yes, they did.

Q How long did they stay?

A They left shortly after midnight, I believe, because Attorney Craig called me and I told him that they were there. They were planning to stay there the evening. He spoke with one of them on the 'phone, and when he got off he said they had to leave.

Q Had you asked them to leave before?

A No.

Q They were not foistering themselves on you?

A I was told that they were going to stay with me all during the night so that reporters would not bother me.

Q Were you told something similar to that about the two men who were left at the house—that they were there to protect things?

A They didn't mention that. After they took Edward out, I had only ten minutes—they told me to pack, because they told me at eight o'clock it would be on the news and they wanted the baby and I out of the house.

Q And you obliged them?

A Yes. I didn't know I had the right to stay.

Q Had you talked with Mr. Craig at any time before you got down to your sister's?

[fol. 157] A No, I didn't.

Q Do I understand you didn't go back to the house before the lock was changed?

A No, I didn't.

Q You didn't go back there with Mr. Craig at all?

A No. I went with Mr. Craig after the lock was changed.

Q Before you went back with Mr. Craig, you didn't go to the home at all?

A No. I had no transportation to Manchester.

Q Do you know whether or not Mr. Craig went to the house?

A He brought the key down to me.

Q Mr. Craig?

A Yes; he came back with the key.

Q Was that after the lock was changed?

A Yes.

Q Didn't he have the keys before the lock was changed?

A The old lock?

Q Do you know whether he did or not?

A I don't know at all—no.

MR. MAYNARD: I have no further questions.

MR. DEVINE: Thank you, Mrs. Coolidge.

I have no further questions. You may step down.

Mrs. Coolidge, Sr. please.

[fol. 158]

TESTIMONY OF
MRS. DOROTHY COOLIDGE

Sworn by Mr. Devine; direct examination by Mr. Devine:

Q Please keep your voice up, Mrs. Coolidge.

A All right.

Q What is your name, Ma'am?

A Mrs. Dorothy Coolidge.

Q You are Edward Coolidge's mother?

A Yes.

Q Is your husband alive?

A No.

Q Where do you live?

A 852 Clay Street.

Q So Edward, your son, and Joanne, your daughter-in-law, in February of 1964 lived in their own home? Is that right?

A Yes.

Q Where was that home?

A 312 Seames Drive.

Q And you lived on Clay Street?

A Yes.

Q About how far apart were the two houses, roughly?

A Maybe half a dozen blocks. It was just about the same distance on the next street, off the street, to my house, you might say, straight in line.

Q That is you were not next door to each other?

A No, no.

[fol. 159] Q How long would it take you, riding in a car, from your house to Ed's house?

A That was only a matter of a couple minutes. I walked it many a time.

Q Going back to February 2nd, 1964—which was a Sunday—and that was the day that Ed went to the police station for questioning and taking the lie detector test—is that right?

A Yes.

Q When did you first learn that Ed had gone to the police station?

A Joannie called me up and told me to come right off.

Q Do you recall what time she called you?

A Between two-thirty and three. She says, "I have got to go somewhere; come over and take care of the baby." I says, "All right." I says, "What do you want and where are you going?" She says, "Just come up." So I went up.

Q When you got there did you learn where she was going?

A Yes. She was going to the police station. There was two officers there, and I knew one of them. I says, "What is up? What is this all about?" They said, "Nothing we know; we have just got to bring her down."

Q Can you tell us how Joanne appeared at that time?

A She was all flustered. She didn't know what was what. She went out the minute I got there. She just said, "The baby is sleeping. You watch him." I did that.

[fol. 160] Q Would you classify her as a nervous girl?

A Yes; very nervous.

Q Even under normal circumstances she is nervous?

A Yes. She holds it in. She is very, very nervous. You touch her and she would be like ice.

Q How long was Joanne at the station that afternoon, before she returned to the house?

A Maybe an hour and a half. The baby had woke up from the nap, I know, and I had the baby.

Q When she came back was she driven home by the police officers, or did she drive back in the car Ed had driven to the station, if you recall?

A Gee, I can't say I recall.

Q When she came back what was her condition and her appearance, as you observed it at that time?

A She was crying and upset and didn't know what it was all about.

Q Did she say what had happened at the station?

A Yes.

Q What did she say?

A She said she had talked with Edward and Officer Stipps talk- with her and told her she could be arrested for withholding information; and she said she didn't know anything—what was what.

Q You say she cried?

[fol. 161] A Yes.

Q Did she say Captain Stipps talked with her about her married life?

A Yes. She told me he asked her all kinds of personal questions.

Q You heard her testify that he asked her why she only had one child?

A Yes.

Q Is it true that she has had two miscarriages?

A Yes; one before this baby and one after this baby.

Q Going now to Sunday, the same day, Mrs. Coolidge, at some time lat that evening when Inspector Glennon and Detective Sergeant McBain arrived at the home, were you present at the time?

A Yes.

Q Tell us what happened when those two officers arrived.

A They came in and said they wanted to talk to Joannie. We went in the living room. Then they said something about whether they should talk with me there. Joannie said, "Why not"—that I am her mother in-law. Then they asked her some little thing—I don't know now what. I said, "That is the so-and-so." They said, "We want to talk with her alone; we want Mrs. Coolidge to answer." I says, "I will go in the other room." They said, "No; we want you to leave." So I called my daughter to come and get me.

Q And you went home?

[fol. 162] A Yes.

Q Can you tell us what Joannie's condition, as you noticed it, was at the time you left?

A She was very nervous—all to pieces. I don't know how to explain her nervousness. She keeps it all inside, but she is like ice. I know her, so I know her state.

Q At the time the officers leftw that night did she call you?

A Yes.

Q Did you go back to her house?

A Yes. Right away.

Q What was her condition after—when you went back after the police left?

A She was crying: she said she didn't know what was going to happen. Edward wasn't home and she didn't know what was what. She said they took some things and looked at the car; and she said they wanted the guns so she told them they could have the guns—she said she didn't want them.

MR. DEVINE: All right, thank you, Mrs. Coolidge. Just a moment, please. You may inquire.

MR. MAYNARD: I have no questions, thank you, Mrs. Coolidge.

MR. DEVINE: We rest, Your Honor.

THE COURT: Would you like a recess before you [fol. 163] proceed?

MR. MAYNARD: It might save a little time, Your Honor.

(Recess)

MR. DEVINE: Before we proceed, my brother has brought to my attention before we rested we asked for some information this morning—that is, the officers who were inside the house and outside the house; and also a list of the items which Captain Stipps gathered from the reports.

THE COURT: I understand that the State is going to put that in through its evidence.

MR. BUSSIERE: Yes, Your Honor.

MR. DEVINE: All right.

MR. BUSSIERE: Officer LeClair.

TESTIMONY OF MAURICE LeCLAIR

Sworn by Mr. Bussiere; direct examination by Mr. Bussiere:

Q State your full name, address and occupation?

A Maurice LeClair, 53 Maynard Ave.; patrolman, Manchester Police Department.

Q Would you tell the Court whether or not on January 28th you had some contact with the defendant in this case, Mr. Coolidge?

A I did.

[fol. 164] Q Who were you with?

A Sergeant Doyon of the State Police.

Q Would you tell me what that contact was?

A We just, on a routine investigation of a report, went up to see Mr. Coolidge, to get his background, occupation, and get his story of his whereabouts, his actions and activities on January 13th.

Q Now, at that time did you look at any weapons?

A Yes, sir. We asked Mr. Coolidge in the presence of his wife if he owned any guns. He produced the guns; took the serial numbers down, the makes, the size. We also asked him if he had access to any other guns or if he ever owned any other guns.

Q What was his reply?

A His reply was that he didn't have no other guns in his possession except the ones he produced, that he did

at one time own a twenty-two calibre pistol which he reported lost or stolen in January of 1960.

Q Will you tell us what guns were produced when you asked if he had any weapons?

A He brought out three weapons—a 410 bolt action shotgun. I believe the other was a Stevens 16 calibre, and a Marlin 30-30 carbine.

Q Where was this interview with Mr. Coolidge?

A It was in his home, in his living room.

[fol. 165] Q Was his wife present at all times?

A I believe she was, sir.

Q Was anything in the interview said about a lie detector test?

A I asked if he was willing to take a lie detector test, and he said he was. He also stated that he had been asked to take a lie detector test some time prior to that.

Q That was referring back to 1960?

A Yes.

Q What did you say as to when he would take a lie detector test?

A I asked what day was available to him. He said he had Sunday and Wednesday off, and he would prefer to take it on a Sunday.

Q How would you describe his attitude up to that point?

A Co-operative.

Q Did he say anything as to whether he had been expecting you, or anything along that line?

A He did mention that he had been checked out in 1960. I believe he did say that he was expecting us.

Q Now, following the 28th, did you pursue this matter any further with Mr. Coolidge on some other day?

A Yes, sir. On February 2nd.

Q How did you go about doing that?

A Approximately eight a.m., I called Mr. Coolidge at home. I identified myself and asked him if he could meet [fol. 166] me at the station at one o'clock, that afternoon. He says, "Is that pertaining to the lie detector test?" I says, "That is right." He says, "All right; I will meet you in the station about twelve-forty-five." I got a

call in the cruiser—I was in the car—saying that Mr. Coolidge was waiting for me.

Q Sometime that afternoon you transported him to Concord?

A Yes.

Q Would you tell us the seating arrangement in the car on the way to Concord?

A He was in the front seat with me. Inspector Glennon was in the back seat.

Q Tell me what the arrangement would be if there are two officers and a prisoner?

A If we have a prisoner, the prisoner is kept in the back seat with a man; and the prisoner is kept away from the driver.

Q After you had got to Concord and had transacted your business and it was time to come back hom, was there any discussion about eating?

A Yes. After we pulled away from the state building, we offered Mr. Coolidge to go into a restaurant and have a sandwich, or would he prefer to go back to Manchester and have a meal. He said he would prefer to go back to Manchester.

Q Would you describe the seating arrangement on the way back to Manchester?

A Mr. Coolidge was in the front seat with me; In-[fol. 167] spector Glennon was in the rear.

Q Did you have any conversation with Detective Sergeant McBain at the completion of the test?

A After the completion of the test Detective Sergeant McBain asked me to come in his office and he told me what had transpired.

Q On the way back can you tell us whether or not there was any conversation about that?

A The first I heard was Inspector Glennon asked Mr. Coolidge—he says, “Concerning the money bag, how did you get it out of the shute—did you use a clothes hanger?” Mr. Coolidge says, “Is that going to be used for or against me in court?” Mr. Glennon answered, “It may.” Then he answered, “I would rather wait until later”, or something to that effect. Then he asked something pertaining to if he was going to be charged for the larceny

of the money. One of us asked why. He said, "I would like to contact my employer first." We said we didn't know anything about it; he would have to contact Captain Stipps.

Q And referring to the being charged, did he state anything about his ability to arrange things with his employer?

A He said he wanted a chance to talk with his employer if he was going to be charged; he would like a chance to contact him before he was charged. We told him we didn't know what the story was; he would have to contact Captain Stipps when we got back.

[fol. 168] Q When you got back to the station, what time was it—about?

A It was approximately seven p.m.

Q You had been away all that time?

A Yes.

Q When you returned to the station did you make any arrangements for food?

A As soon as I got to the station I had a meal ordered. I think the meal came in at approximately eight p.m.

Q What did the meal consist of?

A It consisted of hamburg sandwich, french fries, cold slaw. He did receive coffee, but he requested a bouillon instead. During the course of the evening we were drinking coffee and bouillon. I was drinking the bouillon and he was doing the same.

Q So he got what he wanted to?

A Yes.

Q When you arrived at the station did you see Captain Stipps?

A When we arrived at the station either Captain Stipps was gone or was just leaving, because I didn't have no contact with Captain Stipps until later on that evening.

Q Would you tell us when you made known to Captain Stipps anything with reference to the larceny?

A Later on that evening. Our primary reason was to get his actions on January 13th. We didn't dwell on that until just about two a.m.

[fol. 169] Q While you were in the station will you tell us where this questioning took place?

A In the Inspector Division—upstairs, in the interrogation room.

Q Was Mr. Coolidge deprived of any of his personal property—like his belt, wallet, money or watch?

A No, sir.

Q Was Mr. Coolidge free to go from one room to another?

A Yes, sir. He asked to go to the restroom. He was not accompanied. Several times he left the room, and he left by himself.

Q Was the questioning continuous that night, or did it stop for any reason?

A No, sir. At one time after the meal, I left the room. He was leaning on the table, and I didn't bother him. I let him go for quite a while.

Q And there was no one else bothering him?

A No, sir.

Q Would you describe his attitude during the course of that evening?

A Co-operative.

Q In the course of the evening you did make a number of inquiries from him? Is that correct?

A That is correct, sir.

[fol. 170] Q As you made inquiries and got replies from him, what did you do?

A Tried to verify them, sir.

Q Did that require you to leave the room?

A Yes, sir.

Q And Mr. Coolidge understood what you were doing?

A Yes.

Q And his attitude was one of co-operation? Is that right?

A It was, sir.

Q Do you know what time Detective Sergeant McBain came to the station that evening?

A It was after Mr. Coolidge had his meal. I would say it was probably eight-thirty or nine o'clock.

Q Do you know what time Captain Stipps came back to the station?

A I believe it was right around that same period of time.

MR. BUSSIERE: You may inquire.

MR. DEVINE: No questions, Your Honor.

You may step down.

MR. BUSSIERE: Captain Stipps.

TESTIMONY OF CAPTAIN JOHN A. STIPPS

Previously sworn; direct examination by Mr. Bussiere:

Q Captain, you have been sworn so there will not be any necessity of doing it again.

THE COURT: Yes.

MR. BUSSIERE: All right, Your Honor?

THE COURT: Yes.

[fol. 171] Q Do you recall, Captain Stipps, on the evening of February 2nd at what time you received any information as to a possible larceny from Cote Brothers?

A After talking with Detective Sergeant McBain, Inspector Glennon and Officer LeClair. I remember talking with McBain on the 'phone at home. Whether or not he told me at that time, I don't know; but it was around nine o'clock when I arrived at the station to meet him.

Q In the course of your deposition and in your testimony yesterday, you said something about six o'clock. Is there anything you now want to add to that—as to the hour when there might have been some circumstances, or something happened?

A It would appear now that I was mistaken in the time—from six to nine. I know that I went home late to supper, and I might have been confused as to when I was told about any larceny from Concord. I do not believe that I got the report from Concord until around nine o'clock.

Q At our request, Captain, did you ascertain what officers were detailed to the Coolidge house on the night of the arrest—February 19th?

A Yes.

Q Would you tell us which ones went to the house, and which ones were left at the house?

A The ones that went into the house and were as-[fol. 172]signed to Mrs. Coolidge were Inspector LeBoef and Inspector Vetter. They were assigned to Mrs. Coolidge, and they arrived there at seven-forty-five. They left the house at eight-sixteen p.m., with Mrs. Coolidge, and arrived in Windham, at a home there, at eight-forty-five p.m., on February 19th, 1964. The officers left at the house were Inspector Lord and Inspector Jolin; and they had orders to stay in the house all night—which they did not do, because the orders were changed and they left at ten-thirty-five.

Q As to the instructions to stay in the house—what were the instructions?

A They were instructed to sit in the living room and not to move from there unless there was any disturbance, not to use the television, or use anything in the house—just to guard the house.

Q Were any instructions given as to searching the house?

A It was definite—they were not to search the house.

MR. BUSSIERE: That is all I have.

CROSS EXAMINATION BY MR. GRAF:

Q Did you also check the list of items submitted on the February 20th reports?

MR. BUSSIERE: We will have another witness on that.

Q I gather you made a mistake yesterday, Captain?

A Yes.

[fol. 173] Q Perhaps it is fair to say that you made a mistake in June when we took your deposition?

A Yes.

Q And on both occasions you were under oath?

A That is right.

Q Yesterday you testified that as of six o'clock if Mr. Coolidge had asked to leave, you would have had to book him?

A Well, if—

Q Didn't you say it yesterday?

A I said it yesterday, but I think—using the time six o'clock, that is correct, but in the event I change my statement to nine o'clock, that possibly would be the rea-

son; but at this time, I don't know what I would have done. The thought never occurred. The incident didn't arise, and I don't know what I would have done.

Q At six o'clock or at nine o'clock if Mr. Coolidge said to you, "Captain Stipps, I think I will go home", would you have let him go home?—You wouldn't, would you?

A It would be possible.

Q Captain, as I gather, the primary concern on February 2nd was the Mason case?

A Yes.

Q There was also some concern about the larceny case?

A Yes.

Q Do you think, with those facts in mind, that you [fol. 174] would have let this man just wander out of the station at that time?

A Well, at nine o'clock I do not believe I had sufficient evidence to hold him or to book him on anything.

Q Captain,—

MR. GRAF: Excuse me. I would like to take a moment to go back to the deposition, if I may, Your Honor.

Q Again, Captain, let's go back to the deposition for a minute, reading from page 149, question 667. The question starts here, and says, "So I understand sometime around six o'clock that evening he was informed by either you or the men under you that you were going to bring charges against him for grand larceny?" And you answered, "Yes." Was that your answer?

A Yes.

Q Now I also refer to page 152 of the deposition, starting with question 683: "I assume since he made his confession you considered this grand larceny case solved as of six o'clock? Is that right?" Your answer, "Well, solved, yes." Were those the questions and answer given back in June, in your deposition?

A Yes.

Q You were under oath then?

A Yes.

Q And you were telling the truth then?

A As far as I knew.

[fol. 175] Q The only difference might be the time?

A That is right.

Q But as far as you were concerned, at least by nine o'clock the larceny was solved? Right?

A No.

Q Do you mean there is something wrong with your deposition, also, Sir?

A No. Actually at nine o'clock—now, as I recall, he was under further investigation when McBain and Glennon went to the house to ask some questions with regards to the larceny.

Q Well, we went over that yesterday, and I think we came to an understanding that one of the principal reasons for Detective Sergeant McBain going to the Coolidge house along with Inspector Glennon was in connection with the Mason case?

A Yes.

Q And that the only question raised about the larceny was the question about the washing machine?

A Yes, to verify the fact that he spent the money on a washing machine.

Q Or to verify the fact that there was a washing machine there?

A Yes.

Q I gather again that Detective Sergeant McBain and Inspector LeClair—or Patrolman LeClair and Inspector Glennon—submitted reports as to the time of the alleged confession and the time the case was solved relating to [fol. 176] the larceny case alone? Is that right?

A Yes.

Q And it would be a matter of police practise to insert the time, wouldn't it, in your daily reports?

A I believe there would be a time.

Q In other words, assuming for a minute, Captain, that such a confession or such a statement was made by Mr. Coolidge wouldn't it be fair to say the report would contain the time that such a statement was made?

A Yes.

Q Have you reviewed those reports before testifying here this afternoon?

A Yes.

MR. GRAF: I would like to see the reports, just to double-check, Your Honor. There is some confusion again on this issue as to time. I would like at this time, and demand to see the reports of February 2nd as they relate to the trip to the police barracks in Concord and the time of the return to the station.

THE COURT: Do you have them?

MR. MAYNARD: I will attempt to give them to him, Your Honor. It may take a moment, Your Honor. I would like to read them.

THE COURT: You may sit down, Captain, any time [fol. 177] you want to.—Why don't you go on to something else in the meantime?

MR. GRAF: I don't have much of anything else. I would be glad to have it marked for identification.

THE COURT: Actually, I saw the report yesterday, and it contains no reference to time, as I recall.

MR. MAYNARD: That is the problem. I don't know what my brother wants to look at. We have reports, and we decline to have them marked for identification.

THE COURT: According to my recollection, Captain Stipps is mistaken when he says they have the time when they got the confession as to the larceny.

MR. MAYNARD: This report shows the time of the confession, Your Honor.

THE COURT: Of course this is obviously inaccurate, because the witnesses have testified when Mr. Coolidge was in Concord he did confess at the time of taking the lie detector test, so that this is incorrect—obviously incorrect.

MR. MAYNARD: I don't believe it is inaccurate as [fol. 178] to this confession. It might be as to—

THE COURT: That is why I say the Captain is mistaken when he says there is a time stated as to the confession.

MR. MAYNARD: I think there was an oral confession made at Concord, and this confession was reported to Captain Stipps at sometime around nine o'clock that evening, and they continued inquiring about the Mason case.

THE COURT: This makes no statement of a written confession.

MR. MAYNARD: This is a report of a confession made at two o'clock in the morning.

MR. GRAF: I don't mean to interject, but the difficulty the defense is laboring under is the depositions recites a time of six o'clock. The testimony yesterday recited a time of six o'clock. The new testimony, on examination of the witness today, recites nine o'clock—coupled with the fact that he states reports were made and kept, stating it was done in the ordinary course of business. I am confused at this point, and I think we have a right to see the reports to clean this up.

[fol. 179] THE COURT: The difficulty is that the records will not help us, because the only time stated is about two a.m., which is half an hour before he was placed under arrest.

MR. DEVINE: I thought Captain Stipps said in reviewing the records he found that he was wrong in stating six o'clock as the first time?

THE COURT: I think the record will show what he said was when he got back from Concord, and when they called him.

WITNESS: Yes; when I got the call.

THE COURT: I understand that the State has no records and will have no records at any time which will show any time element with reference to the statement.

MR. MAYNARD: I didn't make that statement. I have the statement which refers—

THE COURT: My point is from the statement which the Captain has made, if I had not seen your records I would assume that the report which you have is a report given at times when the entire work of the day had been conducted. This obviously is not so. The report [fol. 180] starts at two a.m., does it not? It is not a complete day's report of the officer?

MR. MAYNARD: No, Your Honor.

THE COURT: I assume that you have no other report by the officer which gives a report of the work he did during the day, stating the time. I am not trying to preclude you, you understand.

MR. MAYNARD: I don't want to be in the position where in the volume of our reports we cannot show where Officer LeClair, for instance, was at three o'clock in the afternoon.

THE COURT: If you have a report, you may produce it for my examination, at least.

MR. MAYNARD: Well, I will pass it to the Court in the course of our examination.

THE COURT: What I am saying is that this report is not a complete report of the officers' activities for the day, and does not purport to be. I will say that the report which he has in his hand at the present time does not purport to be a report of either officer's activities for the day preceding the day of the arrest. In other words, this report states no time prior to half an hour before the [fol. 181] arrest, and it does not purport to be a report of the officers' activities for the preceding day. If the Attorney General, County Attorney or the police have a report in their records of the trip to Concord and return of Officer Glennon, Detective Sergeant McBain and Officer LeClair, they may produce it for the Court's examination, at least.

MR. DEVINE: All right. May counsel assume as to the times revealed in the reports, those times will be revealed to defense counsel?

THE COURT: Probably.

MR. DEVINE: Thank you, Your Honor.

MR. MAYNARD: We have another report which states he arrived at the station at twelve-forty-five.

THE COURT: That is the defendant?

MR. MAYNARD: Yes.

THE COURT: Well, that has been disclosed to you?

MR. GRAF: We already know that, Your Honor.

THE COURT: All right. Do you have any more questions of Captain Stipps?

[fol. 182] MR. GRAF: No, Your Honor. Off the record—

(Discussion between counsel off the record)

Q (Mr. Graf continuing) Captain, you recall of your own independent recollection testifying that it was your

impression that Mr. Coolidge arrived at the station at approximately two o'clock on February 2nd? Do you recall testifying to that fact?

A It is possible I might have made a mistake there, too. I might have thought the appointment was a two o'clock appointment.

Q That was another mistake?

A Yes.

Q And the six o'clock and nine o'clock was a mistake?

A Yes.

Q Do you know of any other mistakes that you made in your deposition?

A Not at this time.

Q Did you read your deposition before coming in to-day?

A No; about a week after it was written.

Q But you were under oath when you testified?

A Yes. I brought some mistakes to the attention of the justice.

THE COURT: Who?

WITNESS: Attorney Ross.

Q The magistrate?

[fol. 183] A Yes, the magistrate.

Q When did you call these mistakes to his attention?

A He noted them and said he would send them along with the deposition.

MR. GRAF: Brother Bussiere, I was not familiar with any corrections being made in the deposition which was filed with the Court.

MR. BUSSIERE: All I can tell you is the deposition arrived, I forwarded it to Attorney Ross, and he sent it to Captain Stipps, and it was returned.

MR. GRAF: The original deposition was filed with the Court. If there were any changes in it, I am not familiar with them.

THE COURT: Do you want to go through it now?

MR. GRAF: No, but I would like some time to go through it, if there are any changes.

WITNESS: I would like to add that Attorney Ross advised me besides the little differences in that, what I

have read was substantially true, as I read it, and I signed it as it was.

Q But there were no changes made?

A No. He noted them on a piece of paper, but it was [fol. 184] nothing too valuable.

Q He might have changed an "an" to an "a"?

A Well, one thing misquoted was something he said himself. I called it to his attention and he knew he had said something different.

Q Did you change the time from six o'clock to nine o'clock?

A No; I said the way it was it was all right, with the exception I called his attention, and I signed it.

Q Those were just a couple mistakes?

A Yes.

Q And you didn't change them then?

A No.

Q But you do change them now?

A I know they are a mistake now.

MR. GRAF: Fine! No further questions.

MR. BUSSIERE: That will be all, Captain.

MR. MAYNARD: Sergeant McBain

TESTIMONY OF WILLIAM P. McBAIN

Previously sworn; direct examination by Mr. Maynard:

Q You have already been sworn in this case?

A Yes, I have.

Q Sergeant, when you went down to the Coolidge house on the night of February 2, would you tell us in your own words what the reasons were—what the instructions were or what your reasons were for going down [fol. 185] there?

THE COURT: I thought he testified to this yesterday, didn't he? You went all through this yesterday. Is there any reason why you want to repeat it?

MR. MAYNARD: I don't know if he needs to repeat anything. I thought it might be quicker if I went through some of the details with him.

THE COURT: I think he testified yesterday that they went down there for two reasons—one was in connection with the Mason case, and the other was to check on whether or not they had bought a new washing machine. That is correct, isn't it?

THE WITNESS: Yes.

Q Did you go down there to obtain any guns?

THE COURT: He said yesterday he did not.

MR. REYNOLDS: He said not to obtain any special firearms, but they were looking for firearms.

THE COURT: Yes.

Q Was that the purpose of going down there, or was that a general instruction on those days of investigation? [fol. 186] A No, it was not our primary purpose to look for firearms at the Coolidge home.

Q You testified yesterday that you were not looking for any particular firearms?

A That is right.

Q Let me ask you at this time were you spending a considerable part of your time in connection with the investigation of the Mason murder?

A Yes.

Q Up to this time, as part of your investigation of the Mason murder, were you looking for any particular calibre of firearm?

A No; not any particular calibre of gun. No.

Q What were you looking for with respect to firearms?

A It was my belief a twenty-two calibre handgun was what we were looking for.

MR. REYNOLDS: Handgun, sir?

WITNESS: Yes, handgun—revolver, pistol.

Q Did you at the time you went there—did you have any information with respect to the prior visit on the 28th of January, made by Inspectors Glennon and Doyon?

A No, I did not.

Q You hadn't seen any reports on that visit?

A Not at that time.

[fol. 187] Q So you were not aware when you went there as to what, if any, guns Mr. Coolidge might have?

A No.

Q Well, just what was Mrs. Coolidge's attitude?

A Well, prior to visiting the Coolidge home, I inquired from the defendant, Edward Coolidge—

MR. DEVINE: Objection, Your Honor.

THE COURT: That is not responsive to the question.

A Very co-operative.

MR. DEVINE: Let me finish the objection.

MR. MAYNARD: I will withdraw the question. I don't mean to upset people here. I am going to ask the same question again but ask you to be responsive as to how she appeared to you and what her attitude was toward you.

Q What was her attitude?

A Very co-operative; calm, rational. It was a very good interview, I would say.

MR. MAYNARD: No further questions.

MR. DEVINE: No further questions.

MR. MAYNARD: Inspector Glennon.

[fol. 188]

TESTIMONY OF
DONALD F. GLENNON

Previously sworn; direct examination by Mr. Maynard:

Q At the time you went down to Mrs. Coolidge's house on the 2nd of February; at that time did you have any knowledge as to what guns Mr. Coolidge might have had there?

A Only that it was a small calibre gun. I didn't know exactly what we were looking for.

THE COURT: Just a minute. I don't believe you listened to the question, because your answer was not responsive to the question in any way.

WITNESS: I am sorry.

THE COURT: He asked you if you had any knowledge of what guns Mr. Coolidge had at his house.

WITNESS: I am sorry. No, we didn't have any knowledge, or I didn't have any knowledge of the guns he had at the house.

Q At that time you were spending a good deal of your time on the investigation of the Mason murder?

A Yes.

Q In connection with that investigation of the Mason murder, were you looking for any particular gun?

A Yes. We were looking for a small calibre gun—possibly a twenty-two handgun or small calibre—possibly a *seven* on.

[fol. 189] Q You say a small calibre?

A Well, it was not definitely know what we were looking for, I don't believe.

Q Will you tell us what Mrs. Coolidge's attitude was, as it appeared to you, there?

A As Sergeant McBain says, she appeared to be very calm, and very co-operative, and didn't appear to be disturbed too, too much. She appeared calm.

Q And you don't know who she made the coffee for—for herself or someone else?

A No, I don't know who she made it for, but we did partake of a cup of coffee from her.

Q What do you say as to the method in which you received the trousers, jacket and hunting cap from Mrs. Coolidge.

MR. DEVINE: Objection, Your Honor.

THE COURT: This isn't proper rebuttal, of course, because he testified to all of this yesterday.

MR. MAYNARD: I have no further questions, Your Honor.

MR. DEVINE: I have no questions, thank you.

MR. MAYNARD: Assistant Chief Leavitt.

[fol. 190]

TESTIMONY OF
NORMAN W. LEAVITT

Previously sworn; direct examination by Mr. Maynard:

Q Going back to February 2nd of this year, you returned from somewhere on that night?

A Yes, sir, I did.

Q Where did you return from?

A From Kingston, Rhode Island.

Q What time of night did you return?

A It was somewhere in the vicinity of midnight when I arrived at Manchester police headquarters.

Q When you arrived at Manchester police headquarters, was your attention called to any firearms which had been taken in custody by the police, or brought to the station for examination?

A Yes. When I entered the third floor inspector division, I gave the inspector present a statement as to what we would be looking for in a firearm, in a more definite sense than we had previously. At that time they called my attention to four weapons which were laying on the desk in front of me.

Q Did they identify who owned them?

A They said they had been brought in just a short time before from the Coolidge home.

Q Was one of these weapons of the type, and model and manufacture, of the type you were looking for?

A Yes.

[fol. 191] MR. DIVINE: I object, This is not a trial on the merits, and this has nothing to do with the issue before the Court—especially if the Court should order that all these items should be returned to us.

THE COURT: I am puzzled as to the purpose. Obviously what he is saying is hearsay, and I am puzzled as to what you are putting this in for. You don't expect my decision to be made with reference to the importance of the case.

MR. MAYNARD: Certainly not.

THE COURT: What purpose other than to influence me then is this evidence being put in?

MR. MAYNARD: It is put in to show that there was no initiative on the part of the two police officers to pick up any particular firearm, because at that time they had no knowledge of the type of firearm desired; it was only after they had been received at police headquarters that it was then determined that one was of the make and therefore of the type of weapon which the police would then be looking for.

THE COURT: May I say I would find as a fact that I accept the testimony of the three previous police-[fol. 192] men who testified that at the time the weapons were picked up they were not sure of the calibre or type of weapon they were looking for.

MR. MAYNARD: That is our only purpose.

MR. REYNOLDS: We still have a motion pending that that be stricken.

THE COURT: It may be stricken. The evidence is obviously unnecessary, since I am finding that as a fact.

MR. MAYNARD: I have no protest, Your Honor.

THE COURT: I thought you looked as though you were going to.

MR. MAYNARD: I do want to get in testimony about the toque at this time.

Q Was there any item which would be described as a "woolen toque" in the articles you saw—

A On February 7th, when I opened a sweeper type bag containing items which the officers brought to headquarters, I noted in the contents there was a red and black hunting jacket, two pair grayish blue hunting trousers, a black leather fur-lined glove, a wire coat-hanger; when I looked in the pocket of the hunting jacket I found an olive-green knitted woolen toque, and in another pocket I found a box of fifty live rounds of twenty-two ammunition.

THE COURT: Is this the box of live ammunition [fol. 193] which has been mentioned before?

MR. MAYNARD: I think it is the same one and someone put it in the pocket.

THE COURT: Oh, I see. You mean the officer put it in the pocket after he took it from the glove compartment?

MR. MAYNARD: Yes; he took it and put it in the pocket. I think that is the explanation.

THE COURT: I was a little startled.

MR. REYNOLDS: Yes; I was, too. I knew the State has the burden of representing to us the items taken. I would like to have the State put on witnesses to verify this. I am thoroughly confused about this and think I have the right to be straightened out on it.

THE COURT: I am not sure that I am. I understand these items which you have described are all of the items there were there?

WITNESS: Yes, sir.

THE COURT: Did someone, at some point, make a list of them at the police station?

WITNESS: Yes, sir, I believe it is contained in the report.

THE COURT: Whose report?

[fol. 194] WITNESS: I think—there was one mention made of the toque in the report, unless I am mistaken there. I believe I was the first one to discover it in the pocket of the hunting jacket. McBain's report, I believe, has a mention of the second pair of trousers and the ammunition he took from the Pontiac, as coming from the Pontiac.

THE COURT: You have identified them, but I think they were not in any previous list. But that was the only box—

WITNESS: If I may make a correction, it was a long rifle—there was a short and long rifle, and these were for a long rifle.

THE COURT: I didn't realize there was that difference. The long rifle has a longer range?

WITNESS: Yes. It is a higher powered rifle.

THE COURT: I have no questions.

MR. MAYNARD: I would like to have the record show that the Court does not think I would put in anything which would prejudice the Court's impression of the case, because I—

[fol. 195] THE COURT: I am disturbed that you feel that way, Brother Maynard.

MR. MAYNARD: And if an apology is in order, I apologize, sir.

THE COURT: And I will apologize to you, too.

MR. REYNOLDS: The thing I would like to have clear in my mind is the report which Detective Sergeant McBain gave to Captain Regan. Then Inspector Glennon made a report to Captain Stipps. I would like to see the lists myself. We have a representation by County Attorney Bussiere and the Attorney General's office—

MR. MAYNARD: The Court ordered us to furnish a report of the items taken. The items taken under the warrants appear under the endorsement of the warrants. We have furnished you with a list and have amended it by pointing out where and pointing out bullets which were picked up by the vacuum cleaner, which we think you ought to have. We have furnished a list of all the things we know of. I don't believe it is incumbent on us to show you the reports of the officers.

MR. REYNOLDS: This is going—we ask that the [fol. 196] Court order the State to produce a revised list so that we can see on one piece of paper a list of all of the items.

THE COURT: I think there is nothing missing from this list except the ambiguity which arises from the reading of one of the warrants, which has omitted some live rounds of more ammunition which was picked up in the dirt of the car.

MR. DEVINE: No, Your Honor. There was a paring knife and other things—three or four items at least, which came out of this hearing.

THE COURT: Excuse me. Sergeant McBain did mention a paring knife. No one has mentioned it but him.

MR. MAYNARD: We have no knowledge that anyone took a paring knife. If we have it, we will be glad to furnish it.

THE COURT: Didn't someone make a list at some time of all that was taken?

MR. KALINSKI: Any list of items taken is contained in reports of the officers. I requested the police to make a list from those reports.

[fol. 197] THE COURT: Then they obviously did not comply with your request.

MR. KALINSKI: I think they did. This is a complete list except for hair, which was spoken about yesterday, and the live ammunition included in the sweepings.

THE COURT: What about the paring knife?

MR. KALINSKI: As I recall the testimony, Sergeant McBain didn't say that he had the paring knife, and the

police haven't any paring knife in their possession. If we had any knowledge of it, it would be on this list.

THE COURT: Would you be good enough, Brother Kalinski, to go through your police reports and certify further that you have examined them and that there is nothing held by the police other than what you have listed or added to your list in any report?

MR. KALINSKI: Yes, Your Honor.

MR. REYNOLDS: Thank you, Your Honor.

THE COURT: I think that is all they want of you, too, sir.

WITNESS: Thank you.

MR. BUSSIERE: We rest, Your Honor.

[fol. 198] THE COURT: The State rests. Do you rest?

MR. DEVINE: Yes, Your Honor, we rest.

THE COURT: I will see counsel in Chambers.

(Conference in Chambers off the record)

(Tentative Findings of Fact previously transcribed and filed)

DEFS. EX. A

8-31-1964

State 3136

THE STATE OF NEW HAMPSHIRE

Search Warrant

HILLSBOROUGH, SS.

[SEAL]

To any State Police Officer, or the Sheriff of any County, or his Deputy, or to any Constable or Police Officer of any City or Town within the State, Greeting:

WHEREAS, Francis P. McGranaghan of Manchester in the County of Hillsborough has exhibited to me, William Maynard Esquire, a Justice of the Peace within and for the State of New Hampshire, his aforesaid complaint, upon oath, against Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, and has furnished satisfactory evidence that certain objects and things used in the commission of said offense are now concealed in or upon the premises described in the aforesaid and annexed Complaint, and may be removed or may flee before night-day.

WE COMMAND YOU, therefore, to take with you suitable assistants, and to suffer no others to be with you, and to enter and there diligently search in the night-time or day-time the premises described in the annexed Complaint, for the said objects as described in the attached list used in the commission of said offense, and if found, to seize them the same and them safely keep until disposed of according to law, and make return of your proceedings thereon, with an inventory of such things sought as shall be found there, and of such persons things as, being liable to seizure, have been taken by you under this warrant and are still in your custody.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives

pink wallet containing photographs and I.D. card

waterproof cosmetic case
 white bra, size 34, B cup
 white nylon panties with rosette
 cardigan sweater, light color
 ladies' white crocheted driver's glove, leather palm,
 left
 man's pigskin glove, tan, right
 front section, red cotton jersey cut off ski pajamas
 small pieces cut off crotch of olive green stretch ski
 pants
 pencils and ball point pens
 corner of green silk figured scarf
 blood
 pornographic literature
 workshop debris including but not limited to wood
 shavings, metal shavings, brass filings
 hairs, and fibres

Make due return of this warrant to the Municipal Court of Manchester and your doings thereon.

Witness my hand and seal the 19th day of February 1964

/s/ William Maynard
 Justice of the Peace

THE STATE OF NEW HAMPSHIRE

Material Witnesses:

Be it remembered, that on this day of
 A. D. 19 before said Court came

 and acknowledged themselves indebted to the State of
 New Hampshire in the sum of

 dollars each, to be levied upon
 their goods, chattels, lands and tenements, and in default
 thereof upon their bodies, if default be made, in the
 following condition:

THE CONDITION OF THIS OBLIGATION IS SUCH,
That if said above-named persons shall each personally
appear at the SUPERIOR COURT to be holden at
in and for said County, on the
of next, and testify what
they know relative to the within complaint, and not de-
part without order of the court, then this recognizance
to be void.

WITNESS _____ Esquire.

A true copy—Attest:

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

MUNICIPAL COURT OF CONCORD, N. H.

Be it remembered, that on this day of
in the year of our Lord one thousand nine hundred and
, before said Court came
as principal and
as sureties, all of said , and severally ac-
knowledged themselves indebted to the State of New
Hampshire in the sum of dollars each,
(*cash-real-estate*) to be levied upon their goods, chattels,
lands and tenements, and in default thereof upon their
bodies, respectively, if default be made, in the following
conditions:

THE CONDITION OF THIS RECOGNIZANCE IS
SUCH that whereas on this day of 19 ,
the above named Principal was brought before said Court,
by virtue of the within warrant issued by said Court, to
answer to the within complaint, under oath charging
said principal with the
crime of at in
said County, and after hearing and due consideration,
was ordered by said Court to recognize with sufficient
sureties, in the sum of dollars each,
to appear at the SUPERIOR COURT next to be holden

at Concord, in and for said County of Merrimack, on the _____ Tuesday of _____ next, and there wait and abide the order of the Court, and not depart without leave until discharged by order of the Court, and stand committed until this order be performed.

Now, if the said _____ shall make his personal appearance at the said SUPERIOR COURT, agreeably to said order, and there wait and abide the order of said Court, and not depart without leave of said Court, until discharged by order of the Court, and in the meantime be of good behavior, and not violate any provision of the public statutes of this State, then this recognizance shall be void.

_____))
 _____)) SURETIES.
 _____))

Witness _____ Esquire.

OFFICER'S RETURN

MERRIMACK, SS.

20 February, 1964

I have, as within commanded, searched the premises described in the within warrant, and herewith return an inventory made by me of the property found upon said premises and of such things as being liable to seizure have been taken by me, and are now in my custody.

INVENTORY

- 1 Ladies white slip, stained
- 1 Ladies white nightgown
- 1 Yellow cello sponge, stained

/s/ Norman W. Leavitt
 Name of Officer

Assistant Chief
 Title of Officer

No. 7298-A

SEARCH WARRANT

THE STATE OF NEW HAMPSHIRE

vs.

EDWARD H. COOLIDGE, JR.

SS.

Before _____ Esq., Justice.

The above named Respondent was arraigned and plead
guilty and _____ examination.

It is thereupon ordered that said Respondent recognize
with sufficient sureties, in the sum of \$ _____ to
appear at the Superior Court next to be holden at
_____, in and for said County, on the
19 _____, and there wait and abide the order of
the Court, and not depart without leave until discharged
by order of the Court and stand committed until this
order is complied with.

Respondent was arraigned and pled _____ 19
Upon trial he was adjudged _____ guilty.
sentenced to pay a fine of \$ _____ guilty and is
confined at hard labor in the County Jail at _____ or be
_____, House of Correction at
in said County for the term of
days _____ months and stand committed until this
sentence be performed.

Respondent appeals. Thereupon he is required to rec-
ognize with sufficient sureties in the sum of
dollars for his appearance at the next term of the Supe-
rior Court to be holden at _____ in and for
said County on the _____ next,

to prosecute his appeal to effect and to abide the orders of the Court thereon.

February 24, 1964.

This document impounded.

/s/ Alfred J. Chretien
Justice
Manchester Municipal Court

[Filed Feb. 21, 1964, Municipal Court, Manchester, N.H.]

COMPLAINT

To William Maynard a Justice of the Peace within and for the State of New Hampshire.

Francis P. McGranaghan, Chief of Police of Manchester, in the County of Hillsborough on oath complains that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester, aforesaid, in the County of Hillsborough, aforesaid, with force and arms, feloniously, wilfully and of his deliberate and premeditated malice aforethought, did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg .22 caliber rifle, lever action Palomino model 400 S-L-LR, loaded with a cartridge with an explosive charge and projectile and did discharge said rifle causing the projectile from the cartridge therein to strike and wound said Pamela Mason in the head; and the said Edward H. Coolidge, Jr. feloniously, wilfully and of his deliberate and premeditated malice aforethought, did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason in and upon the chest and back of said Pamela Mason and did slash and cut the throat of

said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason instantly died. And so the said Francis P. McGranaghan, upon his oath, aforesaid, complains that the said Edward H. Coolidge, Jr., her, the said Pamela Mason in the manner and by the means aforesaid, feloniously, wilfully, and of his deliberate and premeditated malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Contrary to the form of the statute in such case made and provided, and against the peace of dignity of the State; and the said complainant further complains that he has probable cause to suspect and believe, and does suspect and believe, and herewith offers satisfactory evidence, that there are certain objects and things used in the Commission of said offense, now kept, and concealed in or upon certain premises in a laundromat at 712 Valley Street, Manchester, New Hampshire, to wit: objects described on attached list and that the same may be removed before night-day.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives

pink wallet containing photographs and I.D. card

waterproof cosmetic case

white bra, size 34, B cup

white nylon panties with rosette

cardigan sweater, light color

ladies' white crocheted driver's glove, leather palm,
left

man's pigskin glove, tan, right

front section, red cotton jersey cut off ski pajamas

small pieces cut off crotch of olive green stretch ski
pants

pencils and ball point pens

corner of green silk figured scarf

blood
 pornographic literature
 workshop debris including but not limited to wood
 shavings, metal shavings, brass filings
 hairs, and fibres

WHEREFORE, he prays that a warrant may be issued, authorizing the search of the premises aforesaid-seizure of the person aforesaid in the night-time or day-time, and that the said things, persons if found, seized and safely kept until disposed of, according to law, and that the said Edward H. Coolidge, Jr. may be held to answer to this complaint, and that justice may be done in the premises.

/s/ Francis P. McGranaghan

The State of New Hampshire

Hillsborough, ss., February 19, 1964

Personally appeared the above-named Complainant and made oath that the above complaint by him subscribed is, in his belief, true.

Before me,

/s/ William Maynard
 Justice of the Peace

DEFS. EX. B

8-31-1964

State 3136

THE STATE OF NEW HAMPSHIRE

Search Warrant

HILLSBOROUGH, SS.

[SEAL]

To any State Police Officer, or the Sheriff of any County, or his Deputy, or to any Constable or Police Officer of any City or Town within the State, Greeting:

WHEREAS, Francis P. McGranaghan of Manchester in the County of Hillsborough has exhibited to me, William Maynard Esquire, a Justice of the Peace within and for the State of New Hampshire, his aforesaid complaint, upon oath, against Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, and has furnished satisfactory evidence that certain objects and things used in the commission of said offense are now concealed in or upon the premises described in the aforesaid and annexed Complaint, and may be removed or may flee before night-day.

WE COMMAND YOU, therefore, to take with you suitable assistants, and to suffer no others to be with you, and to enter and there diligently search in the night-time or day-time the premises described in the annexed Complaint, for the said objects as described in the attached list used in the commission of said offense, and if found, to seize them the same and them safely keep until disposed of according to law, and make return of your proceedings thereon, with an inventory of such things sought as shall be found there, and of such persons things as, being liable to seizure, have been taken by you under this warrant and are still in your custody.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives
pink wallet containing photographs and I.D. card
waterproof cosmetic case
white bra, size 34, B cup
white nylon panties with rosette
cardigan sweater, light color
ladies' white crocheted driver's glove, leather palm,
left
man's pigskin glove, tan, right
front section, red cotton jersey cut off ski pajamas
small pieces cut off crotch of olive green stretch ski
pants
pencils and ball point pens
corner of green silk figured scarf
blood
pornographic literature
workshop debris including but not limited to wood
shavings, metal shavings, brass filings
hairs, and fibres

Make due return of this warrant to the Municipal
Court of Manchester and your doings thereon.

Witness my hand and seal the 19th day of February 1964

/s/ William Maynard
Justice of the Peace

THE STATE OF NEW HAMPSHIRE

Material Witnesses:

Be it remembered, that on this day of
A. D. 19 before said Court came

.....
.....
.....
and acknowledged themselves indebted to the State of
New Hampshire in the sum of

dollars each, to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, if default be made, in the following condition:

THE CONDITION OF THIS OBLIGATION IS SUCH, That if said above-named persons shall each personally appear at the SUPERIOR COURT to be holden at _____ in and for said County, on the _____ of _____ next, and testify what they know relative to the within complaint, and not depart without order of the court, then this recognizance to be void.

WITNESS _____ Esquire.

A true copy—Attest:

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

MUNICIPAL COURT OF CONCORD, N. H.

Be it remembered, that on this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, before said Court came _____ as principal and _____ as sureties, all of said _____, and severally acknowledged themselves indebted to the State of New Hampshire in the sum of _____ dollars each, (*cash-real-estate*) to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, respectively, if default be made, in the following conditions:

THE CONDITION OF THIS RECOGNIZANCE IS SUCH that whereas on this _____ day of _____ 19____, the above named Principal was brought before said Court, by virtue of the within warrant issued by said Court, to answer to the within complaint, under oath charging

said principal with the
 crime of at in
 said County, and after hearing and due consideration,
 was ordered by said Court to recognize with sufficient
 sureties, in the sum of dollars each,
 to appear at the SUPERIOR COURT next to be holden
 at Concord, in and for said County of Merrimack, on
 the Tuesday of next, and
 there wait and abide the order of the Court, and not
 depart without leave until discharged by order of the
 Court, and stand committed until this order be performed.

Now, if the said
 shall make his personal appearance at the said SUPE-
 RIOR COURT, agreeably to said order, and there wait
 and abide the order of said Court, and not depart without
 leave of said Court, until discharged by order of the
 Court, and in the meantime be of good behavior, and
 not violate any provision of the public statutes of this
 State, then this recognizance shall be void.

_____)
 _____) SURETIES.
 _____)

Witness _____ Esquire.

OFFICER'S RETURN

MERRIMACK, SS.

21 February, 1964

I have, as within commanded, searched the premises
 described in the within warrant, and herewith return an
 inventory made by me of the property found upon said
 premises and of such things as being liable to seizure
 have been taken by me, and are now in my custody.

INVENTORY

Vacuum sweepings from floor mats,
 seat cushions, and trunk mats
 Piece of fiber insulation from left
 front floor mat with reddish stain

/s/ Norman W. Leavitt
 Name of Officer

Assistant Chief
 Title of Officer

St. No. 7298-A

SEARCH WARRANT

THE STATE OF NEW HAMPSHIRE

vs.

EDWARD H. COOLIDGE, JR.

SS.

Before _____ Esq., Justice.

The above named Respondent was arraigned and plead
 guilty and examination.

It is thereupon ordered that said Respondent recognize
 with sufficient sureties, in the sum of \$ _____ to
 appear at the Superior Court next to be holden at
 _____, in and for said County, on the
 19 _____, and there wait and abide the order of
 the Court, and not depart without leave until discharged
 by order of the Court and stand committed until this
 order is complied with.

Respondent was arraigned and pled
 Upon trial he was adjudged
 sentenced to pay a fine of \$ _____

19
 guilty.
 guilty and is
 or be

confined at hard labor in the County Jail at
 , House of Correction at
 in said County for the term of
 days months and stand committed until this
 sentence be performed.

Respondent appeals. Thereupon he is required to recognize with sufficient sureties in the sum of dollars for his appearance at the next term of the Superior Court to be holden at in and for said County on the next, to prosecute his appeal to effect and to abide the orders of the Court thereon.

March 24, 1964—

This document is hereby impounded.

/s/ William L. Phinney
 WILLIAM L. PHINNEY
 Special Justice
 Manchester Municipal Court

[Filed Mar. 24, 1964, Municipal Court, Manchester, N.H.]

COMPLAINT

To William Maynard a Justice of the Peace within and for the State of New Hampshire.

Francis P. McGranaghan, Chief of Police of Manchester, in the County of Hillsborough on oath complains that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester, aforesaid, in the County of aforesaid, with force and arms, feloniously, wilfully and of his deliberate and premeditated malice aforethought, did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg .22 caliber rifle, lever action Palomino model 400 S-L-LR, loaded

with a cartridge with an explosive charge and projectile and did discharge said rifle causing the projectile from the cartridge therein to strike and wound said Pamela Mason in the head; and the said Edward H. Coolidge, Jr. feloniously, wilfully and of his deliberate and premeditated malice aforethought, did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason in and upon the chest and back of said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason instantly died. And so the said Francis P. McGranaghan, upon his oath, aforesaid, complains that the said Edward H. Coolidge, Jr., her, the said Pamela Mason in the manner and by the means aforesaid, feloniously, wilfully, and of his deliberate and premeditated malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Contrary to the form of the statute in such case made and provided, and against the peace of dignity of the State; and the said complainant further complains that he has probable cause to suspect and believe, and does suspect and believe, and herewith offers satisfactory evidence, that there are certain objects and things used in the Commission of said offense, now kept, and concealed in or upon a certain vehicle, to wit: 1951 Pontiac two-door sedan, Green, N.H. Regis. No. IG 719, Serial No. F 605270 3, to wit: objects described on attached list and that the same may be removed before night-day.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives

pink wallet containing photographs and I.D. card

waterproof cosmetic case

white bra, size 34, B cup
 white nylon panties with rosette
 cardigan sweater, light color
 ladies' white crocheted driver's glove, leather palm,
 left
 man's pigskin glove, tan, right
 front section, red cotton jersey cut off ski pajamas
 small pieces cut off crotch of olive green stretch ski
 pants
 pencils and ball point pens
 corner of green silk figured scarf
 blood
 pornographic literature
 workshop debris including but not limited to wood
 shavings, metal shavings, brass filings
 hairs, and fibres

WHEREFORE, he prays that a warrant may be issued,
 authorizing the search of the premises aforesaid-seizure
 of the person aforesaid in the night-time or day-time,
 and that the said things, persons if found, seized and
 safely kept until disposed of, according to law, and that
 the said Edward H. Coolidge, Jr. may be held to answer
 to this complaint, and that justice may be done in the
 premises.

/s/ Francis P. McGranaghan

The State of New Hampshire

Hillsborough, ss., February 19, 1964

Personally appeared the above-named Complainant and
 made oath that the above complaint by him subscribed
 is, in his belief, true.

Before me,

/s/ William Maynard
 Justice of the Peace

DEFS. EX. C

8-31-1964

State 3136

THE STATE OF NEW HAMPSHIRE

Search Warrant

HILLSBOROUGH, SS.

[SEAL]

To any State Police Officer, or the Sheriff of any County, or his Deputy, or to any Constable or Police Officer of any City or Town within the State, Greeting:

WHEREAS, Francis P. McGranaghan of Manchester in the County of Hillsborough has exhibited to me, William Maynard Esquire, a Justice of the Peace within and for the State of New Hampshire, his aforesaid complaint, upon oath, against Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, and has furnished satisfactory evidence that certain objects and things used in the commission of said offense are now concealed in or upon the premises described in the aforesaid and annexed Complaint, and may be removed or may flee before night-day.

WE COMMAND YOU, therefore, to take with you suitable assistants, and to suffer no others to be with you, and to enter and there diligently search in the night-time or day-time the premises described in the annexed Complaint, for the said objects as described in the attached list used in the commission of said offense, and if found, to seize them the same and them safely keep until disposed of according to law, and make return of your proceedings thereon, with an inventory of such things sought as shall be found there, and of such persons things as, being liable to seizure, have been taken by you under this warrant and are still in your custody.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives
pink wallet containing photographs and I.D. card
waterproof cosmetic case
white bra, size 34, B cup
white nylon panties with rosette
cardigan sweater, light color
ladies' white crocheted driver's glove, leather palm,
left
man's pigskin glove, tan, right
front section, red cotton jersey cut off ski pajamas
small pieces cut off crotch of olive green stretch ski
pants
pencils and ball point pens
corner of green silk figured scarf
blood
pornographic literature
workshop debris including but not limited to wood
shavings, metal shavings, brass filings
hairs, and fibres

Make due return of this warrant to the Municipal
Court of Manchester and your doings thereon.

Witness my hand and seal the 19th day of February 1964

/s/ William Maynard
Justice of the Peace

THE STATE OF NEW HAMPSHIRE

Material Witnesses:

Be it remembered, that on this day of
A. D. 19 before said Court came

and acknowledged themselves indebted to the State of
New Hampshire in the sum of

dollars each, to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, if default be made, in the following condition:

THE CONDITION OF THIS OBLIGATION IS SUCH, That if said above-named persons shall each personally appear at the SUPERIOR COURT to be holden at _____ in and for said County, on the _____ of _____ next, and testify what they know relative to the within complaint, and not depart without order of the court, then this recognizance to be void.

WITNESS _____ Esquire.

A true copy—Attest:

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

MUNICIPAL COURT OF CONCORD, N. H.

Be it remembered, that on this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, before said Court came _____ as principal and _____ as sureties, all of said _____, and severally acknowledged themselves indebted to the State of New Hampshire in the sum of _____ dollars each, (*cash-real-estate*) to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, respectively, if default be made, in the following conditions:

THE CONDITION OF THIS RECOGNIZANCE IS SUCH that whereas on this _____ day of _____ 19 _____, the above named Principal was brought before said Court, by virtue of the within warrant issued by said Court, to answer to the within complaint, under oath charging

said principal with the
 crime of at in
 said County, and after hearing and due consideration,
 was ordered by said Court to recognize with sufficient
 sureties, in the sum of dollars each,
 to appear at the SUPERIOR COURT next to be holden
 at Concord, in and for said County of Merrimack, on
 the Tuesday of next, and
 there wait and abide the order of the Court, and not
 depart without leave until discharged by order of the
 Court, and stand committed until this order be performed.

Now, if the said
 shall make his personal appearance at the said SUPE-
 RIOR COURT, agreeably to said order, and there wait
 and abide the order of said Court, and not depart without
 leave of said Court, until discharged by order of the
 Court, and in the meantime be of good behavior, and
 not violate any provision of the public statutes of this
 State, then this recognizance shall be void.

_____))
 _____)) SURETIES.
 _____))

Witness _____ Esquire.

OFFICER'S RETURN

MERRIMACK, SS.

21 February, 1964

I have, as within commanded, searched the premises
 described in the within warrant, and herewith return an
 inventory made by me of the property found upon said
 premises and of such things as being liable to seizure
 have been taken by me, and are now in my custody.

INVENTORY

Vacuum sweepings from floor mats,
 seat cushions, an trunk mats
 Carborundum honing stone with red-
 dish stains, boxed
 Yellow towel, stained

/s/ Norman W. Leavitt
 Name of Officer

Assistant Chief
 Title of Officer

St. No. 7298-D

SEARCH WARRANT

THE STATE OF NEW HAMPSHIRE

vs.

EDWARD H. COOLIDGE, JR.

ss.

Before _____ Esq., Justice.

The above named Respondent was arraigned and plead
 guilty and _____ examination.

It is thereupon ordered that said Respondent recognize
 with sufficient sureties, in the sum of \$ _____ to
 appear at the Superior Court next to be holden at
 _____, in and for said County, on the
 19 _____, and there wait and abide the order of
 the Court, and not depart without leave until discharged
 by order of the Court and stand committed until this
 order is complied with.

Respondent was arraigned and pled _____ 19
 Upon trial he was adjudged _____ guilty.
 guilty and is

sentenced to pay a fine of \$ _____ or be
 confined at hard labor in the County Jail at
 _____, House of Correction at
 _____ in said County for the term of
 _____ days _____ months and stand committed until this
 sentence be performed.

Respondent appeals. Thereupon he is required to recognize with sufficient sureties in the sum of _____ dollars for his appearance at the next term of the Superior Court to be holden at _____ in and for said County on the _____ next, to prosecute his appeal to effect and to abide the orders of the Court thereon.

March 24, 1964—

This document is hereby impounded.

/s/ William L. Phinney
 WILLIAM L. PHINNEY
 Special Justice
 Manchester Municipal Court

[Filed Mar. 24, 1964, Municipal Court, Manchester, N.H.]

COMPLAINT

To William Maynard a Justice of the Peace within and for the State of New Hampshire.

Francis P. McGranaghan, Chief of Police of Manchester, in the County of Hillsborough on oath complains that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester, aforesaid, in the County of Hillsborough, aforesaid, with force and arms, feloniously, wilfully and of his deliberate and premeditated malice aforethought, did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg .22 caliber

rifle, lever action Palomino model 400 S-L-LR, loaded with a cartridge with an explosive charge and projectile and did discharge said rifle causing the projectile from the cartridge therein to strike and wound said Pamela Mason in the head; and the said Edward H. Coolidge, Jr. feloniously, wilfully and of his deliberate and premeditated malice aforethought, did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason in and upon the chest and back of said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason instantly died. And so the said Francis P. McGranaghan, upon his oath, aforesaid, complains that the said Edward H. Coolidge, Jr., her, the said Pamela Mason in the manner and by the means aforesaid, feloniously, wilfully, and of his deliberate and premeditated malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Contrary to the form of the statute in such case made and provided, and against the peace of dignity of the State; and the said complainant further complains that he has probable cause to suspect and believe, and does suspect and believe, and herewith offers satisfactory evidence, that there are certain objects and things used in the Commission of said offense, now kept, and concealed in or upon a certain vehicle, to wit: 1963 Chevrolet Convertible, aqua, NH Regis No. HP 688, Serial No. 31767 G 120497, to wit: objects described on attached list and that the same may be removed before night-day.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives

pink wallet containing photographs and I.D. card
waterproof cosmetic case

white bra, size 34, B cup
 white nylon panties with rosette
 cardigan sweater, light color
 ladies' white crocheted driver's glove, leather palm,
 left
 man's pigskin glove, tan, right
 front section, red cotton jersey cut off ski pajamas
 small pieces cut off crotch of olive green stretch ski
 pants
 pencils and ball point pens
 corner of green silk figured scarf
 blood
 pornographic literature
 workshop debris including but not limited to wood
 shavings, metal shavings, brass filings
 hairs, and fibres

WHEREFORE, he prays that a warrant may be issued,
 authorizing the search of the premises aforesaid-seizure
 of the person aforesaid in the night-time or day-time,
 and that the said things, persons if found, seized and
 safely kept until disposed of, according to law, and that
 the said Edward H. Coolidge, Jr. may be held to answer
 to this complaint, and that justice may be done in the
 premises.

/s/ Francis P. McGranaghan

The State of New Hampshire

Hillsborough, ss., February 19, 1964

Personally appeared the above-named Complainant and
 made oath that the above complaint by him subscribed
 is, in his belief, true.

Before me,

/s/ William Maynard
 Justice of the Peace

DEFS. EX. D

8-31-1964

State 3136

THE STATE OF NEW HAMPSHIRE

Search Warrant

HILLSBOROUGH, SS.

[SEAL]

To any State Police Officer, or the Sheriff of any County, or his Deputy, or to any Constable or Police Officer of any City or Town within the State, Greeting:

WHEREAS, Francis P. McGranaghan of Manchester in the County of Hillsborough has exhibited to me, William Maynard Esquire, a Justice of the Peace within and for the State of New Hampshire, his aforesaid complaint, upon oath, against Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough, and has furnished satisfactory evidence that certain objects and things used in the commission of said offense are now concealed in or upon the premises described in the aforesaid and annexed Complaint, and may be removed or may flee before night-day.

WE COMMAND YOU, therefore, to take with you suitable assistants, and to suffer no others to be with you, and to enter and there diligently search in the night-time or day-time the premises described in the annexed Complaint, for the said objects as described in the attached list used in the commission of said offense, and if found, to seize them the same and them safely keep until disposed of according to law, and make return of your proceedings thereon, with an inventory of such things sought as shall be found there, and of such persons things as, being liable to seizure, have been taken by you under this warrant and are still in your custody.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives
pink wallet containing photographs and I.D. card
waterproof cosmetic case
white bra, size 34, B cup
white nylon panties with rosette
cardigan sweater, light color
ladies' white crocheted driver's glove, leather palm,
left
man's pigskin glove, tan, right
front section, red cotton jersey cut off ski pajamas
small pieces cut off crotch of olive green stretch ski
pants
pencils and ball point pens
corner of green silk figured scarf
blood
pornographic literature
workshop debris including but not limited to wood
shavings, metal shavings, brass filings
hairs, and fibres

Make due return of this warrant to the Municipal
Court of Manchester and your doings thereon.

Witness my hand and seal the 19th day of February 1964

/s/ William Maynard
Justice of the Peace

THE STATE OF NEW HAMPSHIRE

Material Witnesses:

Be it remembered, that on this day of
A. D. 19 before said Court came

and acknowledged themselves indebted to the State of

New Hampshire in the sum of _____ dollars each, to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, if default be made, in the following condition:

THE CONDITION OF THIS OBLIGATION IS SUCH, That if said above-named persons shall each personally appear at the SUPERIOR COURT to be holden at _____ in and for said County, on the _____ of _____ next, and testify what they know relative to the within complaint, and not depart without order of the court, then this recognizance to be void.

WITNESS _____ Esquire.

A true copy—Attest:

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

MUNICIPAL COURT OF CONCORD, N. H.

Be it remembered, that on this _____ day of _____ in the year of our Lord one thousand nine hundred and _____, before said Court came _____ as principal and _____ as sureties, all of said _____, and severally acknowledged themselves indebted to the State of New Hampshire in the sum of _____ dollars each, (*cash-real-estate*) to be levied upon their goods, chattels, lands and tenements, and in default thereof upon their bodies, respectively, if default be made, in the following conditions:

THE CONDITION OF THIS RECOGNIZANCE IS SUCH that whereas on this _____ day of _____ 19____, the above named Principal was brought before said Court, by virtue of the within warrant issued by said Court, to

answer to the within complaint, under oath charging
 said principal with the
 crime of at in
 said County, and after hearing and due consideration,
 was ordered by said Court to recognize with sufficient
 sureties, in the sum of dollars each,
 to appear at the SUPERIOR COURT next to be holden
 at Concord, in and for said County of Merrimack, on
 the Tuesday of next, and
 there wait and abide the order of the Court, and not
 depart without leave until discharged by order of the
 Court, and stand committed until this order be performed.

Now, if the said
 shall make his personal appearance at the said SUPE-
 RIOR COURT, agreeably to said order, and there wait
 and abide the order of said Court, and not depart without
 leave of said Court, until discharged by order of the
 Court, and in the meantime be of good behavior, and
 not violate any provision of the public statutes of this
 State, then this recognizance shall be void.

_____))
 _____)) SURETIES.
 _____))

Witness _____ Esquire.

OFFICER'S RETURN

MERRIMACK, SS.

20 February, 1964

I have, as within commanded, searched the premises
 described in the within warrant, and herewith return an
 inventory made by me of the property found upon said
 premises and of such things as being liable to seizure
 have been taken by me, and are now in my custody.

INVENTORY

Debris Specimen from cellar
 1 pair gents leather work gloves
 1 light blue tee shirt
 1 khaki Army type raincoat

/s/ Norman W. Leavitt

Name of Officer

Assistant Chief

Title of Officer

No. 7298-B HOUSE

SEARCH WARRANT

THE STATE OF NEW HAMPSHIRE

vs.

EDWARD H. COOLIDGE, JR.

SS.

Before _____ Esq., Justice.

The above named Respondent was arraigned and plead
 guilty and examination.

It is thereupon ordered that said Respondent recognize
 with sufficient sureties, in the sum of \$ _____ to
 appear at the Superior Court next to be holden at
 _____, in and for said County, on the
 19 _____, and there wait and abide the order of
 the Court, and not depart without leave until discharged
 by order of the Court and stand committed until this
 order is complied with.

Respondent was arraigned and pled
 Upon trial he was adjudged
 sentenced to pay a fine of \$ _____

19
 guilty.
 guilty and is
 or be

confined at hard labor in the County Jail at
 , House of Correction at
 in said County for the term of
 days months and stand committed until this
 sentence be performed.

Respondent appeals. Thereupon he is required to recognize with sufficient sureties in the sum of dollars for his appearance at the next term of the Superior Court to be holden at in and for said County on the next, to prosecute his appeal to effect and to abide the orders of the Court thereon.

February 24, 1964.

This document impounded.

/s/ Alfred J. Chretien
 Justice
 Manchester Municipal Court

[Filed Feb. 21, 1964, Municipal Court, Manchester, N.H.]

COMPLAINT

To William Maynard a Justice of the Peace within and for the State of New Hampshire.

Francis P. McGranaghan, Chief of Police of Manchester, in the County of Hillsborough on oath complains that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough on the 13th day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester, aforesaid, in the County of Hillsborough, aforesaid, with force and arms, feloniously, wilfully and of his deliberate and premeditated malice aforethought, did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg .22 caliber rifle, lever action Palomino model 400 S-L-LR, loaded

with a cartridge with an explosive charge and projectile and did discharge said rifle causing the projectile from the cartridge therein to strike and wound said Pamela Mason in the head; and the said Edward H. Coolidge, Jr. feloniously, wilfully and of his deliberate and premeditated malice aforethought, did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason in and upon the chest and back of said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason instantly died. And so the said Francis P. McGranaghan, upon his oath, aforesaid, complains that the said Edward H. Coolidge, Jr., her, the said Pamela Mason in the manner and by the means aforesaid, feloniously, wilfully, and of his deliberate and premeditated malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Contrary to the form of the statute in such case made and provided, and against the peace of dignity of the State; and the said complainant further complains that he has probable cause to suspect and believe, and does suspect and believe, and herewith offers satisfactory evidence, that there are certain objects and things used in the Commission of said offense, now kept, and concealed in or upon certain premises in 312 Seames Drive, Manchester, New Hampshire, to wit: objects described on attached list and that the same may be removed before night-day.

List referred to in Complaint and Search Warrant
Against Edward H. Coolidge, Jr.

knives

pink wallet containing photographs and I.D. card
waterproof cosmetic case

white bra, size 34, B cup
 white nylon panties with rosette
 cardigan sweater, light color
 ladies' white crocheted driver's glove, leather palm,
 left
 man's pigskin glove, tan, right
 front section, red cotton jersey cut off ski pajamas
 small pieces cut off crotch of olive green stretch ski
 pants
 pencils and ball point pens
 corner of green silk figured scarf
 blood
 pornographic literature
 workshop debris including but not limited to wood
 shavings, metal shavings, brass filings
 hairs, and fibres

WHEREFORE, he prays that a warrant may be issued, authorizing the search of the premises aforesaid-seizure of the person aforesaid in the night-time or day-time, and that the said things, persons if found, seized and safely kept until disposed of, according to law, and that the said Edward H. Coolidge, Jr. may be held to answer to this complaint, and that justice may be done in the premises.

/s/ Francis P. McGranaghan

The State of New Hampshire

Hillsborough, ss., February 19, 1964

Personally appeared the above-named Complainant and made oath that the above complaint by him subscribed is, in his belief, true.

Before me,

/s/ William Maynard
 Justice of the Peace

DEFS. EX. E

8-31-1964

State 3136

March 4, 1964—

The defendant having been indicted by the Grand Jury and having been arraigned before the Superior Court—no further proceeding is necessary.

/s/ Alfred J. Chretien
Justice
Manchester Municipal Court

All Search Warrants and returns filed with this Court to be transmitted to the Superior Court forthwith.

/s/ Alfred J. Chretien
Justice
Manchester Municipal Court

A True Copy:

Attest:

/s/ André J. Barbeau
Clerk
Manchester Municipal Court

[SEAL]

[Filed Feb. 20, 1964 Municipal Court Manchester, N.H.]

No. 7298

COMPLAINT AND WARRANT

THE STATE, COMP'T.

vs.

EDWARD H. COOLIDGE, JR.

February 19, 1964

, SS.

MUNICIPAL COURT OF

, N. H.

Before

Esq., Justice

_____, 19__

Respondent being arraigned plead _____ guilty.
 Upon trial he was adjudged _____ guilty. Sen-
 tenced to pay a fine, of \$ _____ or to be confined
 in the _____ at _____
 for the term of _____ days,
 and stand committed until this
 sentence be performed.

_____, Justice
 Respondent appeals. Thereupon he is required to rec-
 ognize, with sufficient sureties, in the sum of _____
 dollars, for his appearance at the term of the
 Superior Court next to be holden at _____
 in said County on the first Tuesday of _____
 next, there to enter and prosecute his appeal to effect, to
 abide the orders of the Court thereon, and be of good
 behavior in the meantime.

_____, Justice

MURDER

Feb. 20, 1964

Before CHRETIEN, J.

Not Guilty. Con'td. for examination on probable cause to Mar. 4, 1964 ordered held w/o bail at Hillsborough Co. Jail.

Att'y. William [illegible] representing defendant, excepted to cont. setting date for examination to Mar. 4, 1964.

[Illegible] issued to Jail.

THE STATE OF NEW HAMPSHIRE

COMPLAINT

To the Municipal Court of Manchester

Francis P. McGranaghan, Chief of Police of Manchester in the County of Hillsborough on oath complains that Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough on the thirteenth day of January in the year of our Lord one thousand nine hundred and sixty-four at Manchester, aforesaid, in the County of Hillsborough aforesaid, with force and arms, feloniously, wilfully and of his deliberate and premeditated malice aforethought, did make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a Mossberg .22 caliber rifle, lever action Palomino model 400 S-L-LR, loaded with a cartridge with an explosive charge and projectile and did discharge said rifle causing the projectile from the cartridge therein to strike and wound said Pamela Mason in the head; and the said Edward H. Coolidge, Jr. feloniously, wilfully and of his deliberate and premeditated malice aforethought, did further make an assault upon the person of Pamela Mason with a deadly weapon, to wit: a knife, and did strike, penetrate and wound the said Pamela Mason in and upon the chest and back of said Pamela Mason and did slash and cut the throat of said Pamela Mason; and the said Edward

H. Coolidge, Jr. then and there inflicted said wounds, which wounds were mortal wounds, in and upon the head, chest, back and neck of the said Pamela Mason, from which mortal wounds the said Pamela Mason instantly died. And so the said Francis P. McGranaghan, upon his oath, aforesaid, complains that the said Edward H. Coolidge, Jr., her, the said Pamela Mason in the manner and by the means aforesaid, feloniously, wilfully, and of his deliberate and premeditated malice aforethought, did kill and murder, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Wherefore, the said Complainant prays that the said Respondent, Edward H. Coolidge, Jr. may be held to answer to this Complaint, and that justice may be done in the premises.

Hillsborough, ss. Feb. 19, 1964

Personally appeared Francis P. McGranaghan and made oath that the above Complaint by him subscribed is, in his belief, true.

Before me,

/s/ William Maynard
Justice of the Peace

A True Copy:

Attest:

/s/ André J. Barbeau
Clerk
Manchester Municipal Court

[SEAL]

THE STATE OF NEW HAMPSHIRE

WARRANT

HILLSBOROUGH, SS.

[SEAL]

*To any State Police Officer, or the Sheriff of any County,
or his Deputy, or to any Constable or Police Officer
of any City or Town within the State, Greeting:*

WHEREAS, Francis P. McGranaghan, Chief of Police of Manchester in the County of Hillsborough has exhibited to me, William Maynard Esquire, a Justice of the Peace within and for the State of New Hampshire, his aforesaid complaint, upon oath, against Edward H. Coolidge, Jr. of Manchester in the County of Hillsborough.

WE COMMAND YOU To take the said Edward H. Coolidge, Jr. (to be found in your precinct) and bring him before the Municipal Court of Manchester in said County of Hillsborough.

AND WE FURTHER COMMAND YOU To summon

to appear and testify what he know relating to said Complaint, when and where you may have said Respondent before said Municipal Court for trial.

Dated the nineteenth day of February, 1964

/s/ William Maynard
Justice of the Peace

, ss. Feb. 19, 1964

I have arrested the body of the above named Edward
H. Coolidge, Jr. and summoned said _____

and now have him before the Municipal Court aforesaid,
as commanded.

/s/ Norman W. Leavitt
Name of Officer

Ass't. Chief
Title of Officer

A True Copy:

Attest:

/s/ André J. Barbeau
Clerk
Manchester Municipal Court

[SEAL]

DEFS. Ex. F

8-31-1964

State 3136

ARREST REPORT

MANCHESTER, N. H. POLICE DEPARTMENT

Defendant: Edward H. Coolidge Jr. DOB: 6-8-37
(Last) (First) (Middle)

Address: 312 Seames Drive, Manchester, N.H. _____

Date & Time of Arrest: 2/3/64 _____

Place of Arrest: Police Headquarters _____

Elements of Offense: Grand Larceny _____

1. Time & Date: July 1, 1962 _____
2. Location: Cote's Bros. Bakery 87 Elm St., Manchester, N.H. _____
3. Identification of Defendant: We can identify, this subject admitted to us the theft of a money bag, containing \$388.95 from the building off Cote Bros. Inc. 87 Elm St. _____

4. _____

5. _____

6. _____

(USE REVERSE SIDE FOR ADDED INFORMATION)

172

Veh Reg: State: _____ No. _____

Type: _____ Year: _____

Color: _____ Make: _____

Towed To: _____ Authority: _____

For OUIL Cases Complete Following:

Alcometer Reading: _____ Blood: Yes ☐ No ☐

Sample Turned Over To: _____ By Dr: _____

Date and Time of Drs. Examination: _____

Names & Addresses of Witnesses: _____

Signature of Arresting Officer [Illegible]

Court Date: 2-3-64 _____ Bail: _____

Date & Time Booked: 2-3-64 2:30 A.M. Cell No. #12

Signature of Booking Officer [Illegible]

DEFS. EX. G

8-31-1964

State 3136

THE STATE OF NEW HAMPSHIRE

[State Seal]

ATTORNEY GENERAL
CONCORD

Attorney General
William Maynard
Deputy Attorney General
George S. Pappagianis

Assistant Attorneys General
William J. O'Neil
William F. Cann
Alexander J. Kalinski
Ronald H. Bean
Robert W. Moran
Attorneys
Irma A. Matthews
George L. Manias
Legal Research Assistant
Marion G. Alexander

July 15, 1964

John A. Graf, Esq.
Forty Stark Street
Manchester, New Hampshire

Dear Brother Graf:

Re: State v. Edward Coolidge, Jr.

In accordance with Judge Griffith's order at the most recent hearing upon motions in the above-entitled action, the following is a list of Edward Coolidge's personal property in the possession of the prosecution:

- 1 Marlin 30-30 rifle, Model 1936, Serial # B998
- 1 Mossberg Shotgun 410 Gauge Model 183DA
- 1 Remington Shotgun 16 Gauge Model 1148 Serial # 5518747

- 1 Mossberg rifle, Cal. 22, Model Palomino 400
- 2 pair of men's trousers
- 1 red hunting jacket
- 1 wool toque
- 1 black leather fur-lined glove
- 1 coat hanger
- 1 box of .22 cal. bullets

Also the clothes worn by the respondent at the time of arrest which includes: 1 man's jacket, one pair of man's trousers, shoes and socks, a t-shirt and a shirt.

Very truly yours,

/s/ Alexander J. Kalinski
ALEXANDER J. KALINSKI
Assistant Attorney General

AJK:aml

DEFS. EX. H

3-31-1964

State 3136

- 1 Palomino Model 400 22 Cal. S-L-LR
- 1 16 Ga. for 2¾ or Shorter Shells Ser. # 5518747 Remington Model 11-48
- 1 Marlin—Model 1936 Ser. # B 998
- 1 410 Ga—3 inch Shot gun Model 183D-A
Of Mossberg & Sons Inc.
- 1 Red Jacket
- 1 pr. Uniform Trousers—

I have received the above items from Joanne Coolidge for examination.

/s/ Insp. D. Glennon
Manchester Pol.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS

APRIL TERM 1964

#3136 & #3137

THE STATE OF NEW HAMPSHIRE

v.

EDWARD H. COOLIDGE, JR.

MOTION ON PETITION TO QUASH

NOW COME J. Murray Devine, Matthias J. Reynolds and John A. Graf, counsel for Edward H. Coolidge, Jr., and represent:

1. That at the hearing on the petitions held August 31 and September 1, 1964, counsel for the defendant through mistake and inadvertence neglected to introduce as an exhibit the motor vehicle registrations of the 1963 Chevrolet convertible and the 1951 Pontiac.

2. That it is essential for the Court to have these as exhibits in order to make its findings of fact and rulings of law.

WHEREFORE, your petitioners pray that the motor vehicle registrations attached to the enclosed Affidavit be admitted as an exhibit.

Respectfully submitted,

J. MURRAY DEVINE
MATTHIAS J. REYNOLDS
JOHN A. GRAF

By: /s/ Matthias J. Reynolds
Attorneys for
Edward H. Coolidge, Jr.

I hereby certify that a true copy of the above Petition to Quash was sent to Attorney General William Maynard and County Attorney Emile Bussiere this third day of September 1964.

/s/ Matthias J. Reynolds

AFFIDAVIT IN SUPPORT OF
PROPOSED EXHIBITS

I, Matthias J. Reynolds, co-counsel for the defendant, Edward H. Coolidge, Jr., certify that the attached motor vehicle registrations for a 1963 Chevrolet and a 1951 Pontiac for the registration year 1963-1964 are identical copies of those registrations obtained by me from the New Hampshire Motor Vehicle Department.

I further certify that the copies going to the Court are the exact copies received from the Motor Vehicle Department and the copies going to opposing counsel are xerox copies of those which were made under my direction and which I have verified as being identical in all respects.

Plate Number HP 6FF Do Not Write		Print Type of Vehicle If Other Than Passenger Car		APPLICATION 1963-64	
Type or Print in Ink Mailing Address			Description of Vehicle		County HILLSBORO
Name EDWARD H. COOLIDGE JR.			Make CHEVROLET		Year of Mfg. 1963
312 SEAINES DRIVE			Type CO. RV.		Color ASUA
MANCHESTER N. H.			Serial No. 317676 120497		No. of 6
Legal Residence — If Other Than Mailing Address			Gross Weight 4150		Model No.
Dept's Exhibit 4-11			TYPE OF REG. CHECK ONE		
			Automobile <input checked="" type="checkbox"/>		Farm <input type="checkbox"/>
			Commercial <input type="checkbox"/>		Trader <input type="checkbox"/>
			Boat <input type="checkbox"/>		Motorcycle <input type="checkbox"/>
			Agricultural <input type="checkbox"/>		Trailer <input type="checkbox"/>
44-653 303499			12-28-63		

No. of Axles	Weight Empty	Weight of Load	Gross Weight
How is this vehicle owned? Individually (X) Jointly () Corp. () Lease () Explain			
Name of Insurance Company Covering This Vehicle EMPLOYERS			
All Poll and Head Taxes for which (1 and two are) liable have been paid YES			
Date of Birth of Registrant	Month	Day	Year
	6	8	1939
Registrant's Signature Edward H Coolidge Jr.			
If Other Than Owner Give Title			
This application is signed under the penalty of perjury, both cards must be properly filled out or they will be returned. Make payment to — MOTOR VEHICLE DIVISION, Concord, N. H.			

Plate Number <div style="font-size: 1.5em; font-family: cursive;">E 6719</div> Do Not Write	Print Type of Vehicle If Other Than Passenger Car <div style="font-size: 1.5em; font-family: cursive;">1963-64</div>										
Type or Print in Int mailing Address <div style="font-size: 1.2em; font-family: cursive;">EDWARD H COOLIDGE JR 312 SEADMS DRIVE MANCHESTER N. H.</div>	Description of Vehicle <div style="font-size: 1.2em; font-family: cursive;">AUTO</div>	County <div style="font-size: 1.2em; font-family: cursive;">HILLSBORO</div>	Year of Mfg. <div style="font-size: 1.2em; font-family: cursive;">1951</div>								
Make <div style="font-size: 1.2em; font-family: cursive;">PONTIAC</div>	Type <div style="font-size: 1.2em; font-family: cursive;">4 DR SEDAN</div>	Color <div style="font-size: 1.2em; font-family: cursive;">GREEN</div>	Serial No. <div style="font-size: 1.2em; font-family: cursive;">F60527032</div>								
Gross Weight <div style="font-size: 1.2em; font-family: cursive;">4105</div>	Model No. <div style="font-size: 1.2em; font-family: cursive;">16</div>										
Residence — If Other Than Mailing Address <div style="font-size: 1.2em; font-family: cursive;">DXTS EXHIBIT T</div>		TYPE OF REG. CHECK ONE <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Automobile <input checked="" type="checkbox"/></td> <td style="width: 50%;">Farm <input type="checkbox"/></td> </tr> <tr> <td>Commercial <input type="checkbox"/></td> <td>Tractor <input type="checkbox"/></td> </tr> <tr> <td>Official <input type="checkbox"/></td> <td>Motorcycle <input type="checkbox"/></td> </tr> <tr> <td>Agricultural <input type="checkbox"/></td> <td>Trailer <input type="checkbox"/></td> </tr> </table>		Automobile <input checked="" type="checkbox"/>	Farm <input type="checkbox"/>	Commercial <input type="checkbox"/>	Tractor <input type="checkbox"/>	Official <input type="checkbox"/>	Motorcycle <input type="checkbox"/>	Agricultural <input type="checkbox"/>	Trailer <input type="checkbox"/>
Automobile <input checked="" type="checkbox"/>	Farm <input type="checkbox"/>										
Commercial <input type="checkbox"/>	Tractor <input type="checkbox"/>										
Official <input type="checkbox"/>	Motorcycle <input type="checkbox"/>										
Agricultural <input type="checkbox"/>	Trailer <input type="checkbox"/>										

No. of Axles	Weight Empty	Weight of Load	Gross Weight

How is this vehicle owned? Individually ☒ Jointly () Corp. () Lease () Exempt

Name of Insurance Company Covering This Vehicle AETNA

All Poll and Head Taxes for which () one () two () three () have been paid yes

Date of Birth of Registrant
 Month 1 Day 8 Year 1937

Registrant's Signature Edward H Coolidge Jr

If Other Than Owner
 Give Title

This application is signed under the penalty of perjury, both cards must be properly filled out or they will be returned. Make payment to — MOTOR VEHICLE DIVISION, Concord, N. H.

DO NOT MAIL CASH

/s/ Matthias J. Reynolds
 MATTHIAS J. REYNOLDS

Personally appeared before me this third day of September 1964, the above named, Matthias J. Reynolds, and under oath swore that the above statements made by him are true and correct.

/s/ [Illegible]
Justice of the Peace

I, Matthias J. Reynolds, certify that on this third day of September 1964, a copy of the within Petition-Motion and accompanying Affidavit were mailed to Attorney General William Maynard and County Attorney Emile Bussiere.

/s/ Matthias J. Reynolds
MATTHIAS J. REYNOLDS

St. 3136

St. 3137

MOTION THAT MOTOR VEHICLE REGISTRATIONS BE ADMITTED AS EXHIBITS ON PETITION TO QUASH AND AFFIDAVIT THERETO

STATE

v

EDWARD H. COOLIDGE, JR.

Motion granted.

/s/ Robert F. Griffith
P.J.

9/11/64

[Filed Sep. 4, 9:40 a.m., 1964, Clerk,
N.H. Superior Court, Hillsborough County.]

DEFS. EX. J

THE STATE OF NEW HAMPSHIRE

[State Seal]

ATTORNEY GENERAL
CONCORD

Attorney General
William Maynard
Deputy Attorney General
George S. Pappagianis

Assistant Attorneys General
William J. O'Neil
William F. Cann
Alexander J. Kalinski
Ronald H. Bean
Robert W. Moran
Attorneys
Irma A. Matthews
George L. Manias
Legal Research Assistant
Marion G. Alexander

September 18, 1964

Honorable Robert F. Griffith
Hillsborough County Superior Court
Nashua, New Hampshire

Re: State v. Edward Coolidge, Jr.

Dear Judge Griffith:

In compliance with the Court's order at the hearings upon the defendant's Petition to Quash held upon August 31, 1964 and September 1, 1964, we certify that the following is a complete list of property of Edward Coolidge in the possession of the prosecution and not obtained under the search warrants:

- 1 Marlin 30-30 rifle, Model 1936, Serial # B 998
- 1 Mossberg Shotgun, 410 Gauge, Model 183 DA
- 1 Remington Shotgun, 16 Gauge, Model 1148, Serial # 5518747

- 1 Mossberg Rifle, cal. .22, Model Palomino 400
- 2 Pair of men's trousers, uniform
- 1 Red plaid hunting jacket
- 1 Green wool toque
- 1 Black leather gents fur lined glove
- 1 Coat hanger
- 1 Box of 50 .22 cal. bullets

Clothes worn by respondent at time of arrest:

- 1 Gents gray jacket
- 1 Gents gray shirt
- 1 Tee shirt
- 1 Pair boxer shorts
- 1 Pair gents sox
- 1 Pair gents shoes
- 1 Pair gents trousers
- 1 Gents brown leather belt

Specimens of scalp, chest, arm, and pubic hair

- 1 Plastic handle kitchen paring knife

The only item which is not included on the previous list is the paring knife. At the hearing Det. Sgt. William McBain testified that he saw a paring knife in the glove compartment of the 1951 Pontiac on Sunday, February 2, 1964, but he couldn't remember whether he took the paring knife or not. The reports indicate that he did take the paring knife. The State attaches no significance to the paring knife and offers to return it without the necessity of any court order.

It should also be mentioned that the State has in its possession the 1951 Pontiac with all of its contents which includes items of personal property which undoubtedly belong to the defendant Coolidge. These items were not returned on the search warrants and no inventory has been made of such contents of the 1951 Pontiac, although the police have examined a number of these items. If

the Court desires, the State will inventory such contents and file it with the Court.

Very truly yours,

/s/ William Maynard
WILLIAM MAYNARD
Attorney General

/s/ Alexander J. Kalinski
ALEXANDER J. KALINSKI
Assistant Attorney General

AJK:w

cc—J. Murray Devine, Esq.
1838 Elm Street
Manchester, N. H.

cc—John A. Graf, Esq.
40 Stark St.
Manchester, N. H.

LIST OF PROPERTY OF EDWARD COOLIDGE, JR.
IN POSSESSION OF STATE NOT OBTAINED
UNDER SEARCH WARRANTS

STATE

v

EDWARD H. COOLIDGE, JR.

St. 3136

St. 3137

[Filed Sep. 18, 1964, Clerk N.H. Superior Court,
Hillsborough County.]

TENTATIVE FINDINGS BY THE COURT ON DEFENDANT'S
PETITION TO QUASH SEARCH WARRANTS, TO RELEASE
ITEMS OF PROPERTY SEIZED, ET CETERA

GRIFFITH, J.

After hearing on petition filed July 22, 1964, the Court finds that this hearing on the motion falls into two general categories of items searched and/or seized. First are a group of items which are contained either on the present list furnished by Assistant Attorney General Kalinski or which will be contained in an amended list to be filed of certain items claimed to have been seized without a search warrant. The circumstances surrounding the acquisition by the police of the items referred to are as follows:

On February 2nd, around one p.m. in the afternoon, Edward Coolidge, Jr., at the request of the police and as a result of a prior interview with Sgt. Doyon and Officer LeClair, went to the police station for the ostensible purpose of taking a lie detector test. His appearance at the police station at one o'clock on Sunday, February 2nd was as a result immediately of a telephone call received by him at his home, from Officer LeClair at eight a.m. in the morning. Some time shortly before four

o'clock in the afternoon, Coolidge went to Concord in company with Officer LeClair and Inspector Glennon, to the State Police Barracks, where he took a lie detector test given him by Sergeant McBain of the State Police. He returned following this test, in an automobile, to Manchester, reaching Manchester at about seven o'clock in the evening, with the same officers.

The Court finds that his presence both at the police station and in the car to and from Concord was, at least up to this point, voluntary. In the course of his lie detector test, the police testified that he admitted the theft of some three hundred dollars from his employer, Cote Brothers, and there was some conversation with Inspector Glennon on the way back to Manchester as to whether or not he would be charged with this theft. He was not formally charged with the theft of the three hundred dollars until two-thirty a.m. in the morning; and the Court finds that he never at any time requested an opportunity to leave the station prior to being charged, but that had he requested it he probably would have been detained either with a formal charge or without a formal charge being made.

Mrs. Joanne Coolidge, wife of Edward Coolidge, Jr., who had been informed of the requested presence of Edward Coolidge, Jr. at the police station, was called for by the police herself some time about two-thirty, by two policemen who took her in a police car to the station, where she had a short conversation with her husband and a conversation with Captain Stipps of the police force, which is not particularly relevant to this case, except that she alleges and he agrees that he urged her to tell the truth or she might be in trouble if she didn't. She returned to her home in one of the two family cars, a Chevrolet.

Mrs. Coolidge, Sr., mother of Edward Coolidge, Jr. had been called to the Coolidge home when Mrs. Coolidge, Jr. went to the police station at about two-thirty, for the purpose of babysitting, and was at the house at ten-thirty p.m. when Sergeant McBain and Inspector Glennon called at the home, dressed in plain clothes. They went to the house generally for the purpose of questioning Mrs. Cool-

idge, Jr. about the theft from Cote Brothers, and further particulars about the ~~Mason~~ murder, on which both Sergeant McBain and Inspector Glennon were generally assigned. In the course of their questioning, they inquired if Mr. Coolidge, Jr. had any firearms. They were informed by Mrs. Coolidge that he had, and she went, in company with them, into the bedroom, to a closet where there were four guns—two shotguns and two rifles referred to in the list submitted by Assistant Attorney General Kalinski.

At this time the police and investigating authorities had no knowledge of the exact calibre or type of weapon that they were looking for, it being generally the theory of the police at that time that the weapon might very well be a small handgun or revolver. The police had previously been informed by Edward Coolidge, Jr. that he possessed at least three firearms, which they had not asked to examine previously. McBain and Glennon, with the full consent of Mrs. Coolidge, took the four guns, together with certain items of clothing, from the house, which are contained in the list, and for which they gave a receipt which contains a list of all of the things taken from the house at that time.

When they left the house they told Mrs. Coolidge, and she did not at least object, that they proposed to look in the two automobiles which were out front. She gave them the keys for this purpose. They took certain items which are contained in the list and constituted items not set forth on the receipt given to Mrs. Coolidge, and the Court finds that Mrs. Coolidge knew that some items were being taken but did not know specifically what items were being taken, and did not specifically agree to those items being taken. She was not given a list of these items nor a receipt for them.

At the request of the defendant the Court would find that Mrs. Coolidge, Jr. had no knowledge of any constitutional rights, either by explanation of the police or otherwise, to deny the police the right to examine these, but finds that at that point Mrs. Coolidge fully intended to cooperate with the police in every way and to furnish

them freely with both information and guns in order, as she stated, to clear her husband of any suspicion.

Immediately after the police arrived, Mrs. Coolidge, Sr. left, at the request of the police, and Mrs. Coolidge was almost immediately informed by the police that her husband was in trouble because of the larceny and that it was doubtful if he would return that night.

The Court specifically finds that there was no search by the police of the premises at this time by either Sergeant McBain or by Inspector Glennon, and that it could only be ruled either a voluntary surrender of the items taken, both inside and outside, by Mrs. Coolidge, or a waiver of a right to resist seizure of the items in the house.

The Court finds that Mrs. Coolidge, Jr. is an extremely thin, nervous woman at the present time, and that assuming her condition is not greatly dissimilar today than what it was then, she would not have the resistance that a normal person of her age would have.

The Court does find that there was a search of the two automobiles and a taking of items, and there is a question as to whether or not it was done with the proper consent or a waiver of constitutional rights.

By use of the word "seizure", the Court makes no legal conclusion in these findings at this point.

The Court further finds that as part of the facts surrounding the taking of the items from the house, Mrs. Coolidge, Jr., at some point prior to the taking by the police, asked them if they wanted the guns, and one of the policemen said "No", and the other said "Yes".

The Court finds that the principal purpose of the police visit to the house was in connection with the Mason murder.

The Court finds that the officers were served with coffee by Mrs. Coolidge and that they left the house at approximately eleven-fifteen p.m.

The remainder of the motion relates to the validity of four search warrants, all issued on February 19th, 1964, all at approximately the same time, and all approximately at the same time that the warrant for the arrest was issued for the murder of Pamela Mason.

These warrants, which have been marked as exhibits, were for search of the premises owned by Mr. Coolidge, Jr., at 312 Seames Drive, a laundermat at 712 Valley Street, and the two automobiles—one a Pontiac and the other a Chevrolet. The search warrants all enumerated the same items to be looked for in each place, and the returns show various things collected from each place. The Court finds that the search warrants were issued by the Attorney General, acting as a Justice of the Peace, and it is agreed that the Attorney General was in charge of the investigation of the Mason case.

It is further found that the complaints for the search warrants were drafted by the Attorney General's office, and Chief McGranahan, who signed all of them as complainant, made oath before William Maynard, a Justice of the Peace. No evidence was offered by either the State or the defendant at this time as to what, if any, evidence was offered in addition to the complaints, prior to the issuance of the warrants.

The Court finds that the laundermat was searched during the forenoon of February 20th, the house was searched after two p.m. on February 20th, the Pontiac on Friday, February 21st, and the Chevrolet also on February 21st. The Mason warrants were served at eight p.m., on February 19, 1964, to arrest Coolidge on a charge of murder. Then both he and his wife were required to leave the premises, by the police. The locks on the house were changed by the police the following day.

The Court would find that the police purpose in removing Mrs. Coolidge, Jr. from the house that night at least was solely for her own protection from news media.

The Court finds that all during the period covered by the testimony on this motion, Mr. and Mrs. Coolidge were living in the home as husband and wife, with their child, and that she, as his wife, was entitled to occupy the premises.

The Court finds that on January 28th of 1964, two police officers, Doyon and LeClair, were questioning Mr. Coolidge with Mrs. Coolidge in the house, and that he showed them some guns at that time, which Mrs. Coolidge saw being shown to them. The police at that time did

not take the guns or request the guns, and the officers who called on the night of February 2nd had no knowledge of this previous visit at that time.

The Court finds as a matter of fact that there was never any request by the police of Edward Coolidge, Jr., on February 2nd, to search or to take any items from his house or cars.

The Court finds as a fact that during the latter part of January and the early part of February the police were questioning many people and from time to time had taken various weapons, with the consent of the people, to be examined, in the vicinity of Manchester.

I will have these findings transcribed and they will be sent to counsel; and I would like to have any briefs by the end of next week.

ROBERT F. GRIFFITH
Presiding Justice

September 1, 1964.

DEFENDANT'S REQUEST FOR FINDINGS OF FACT

NOW COME J. MURRAY DEVINE, MATTHIAS J. REYNOLDS AND JOHN A. GRAF, counsel for Edward H. Coolidge, Jr. and request that the Court make the following findings of fact by amending the Tentative Findings in the manner set forth herein.

1. On Page 4 Line 28, the sentence be amended to read as follows: "He was not formally charged with the theft of the three hundred dollars until two-thirty a.m. in the morning of February 3, 1964; . . ."

2. On Page 5 Line 6, the sentence be amended to read as follows: ". . . except that she alleges and he agrees that he urged her to tell the truth or she might go to prison as an accessory if she didn't."

3. On Page 5 Line 8, the sentence be amended to read as follows: "She returned to her home in the 1963 Chevrolet, a motor vehicle owned by her husband, Edward H. Coolidge, Jr."

4. On Page 5 Line 30, the sentence be amended to read as follows: "McBain and Glennon took the four guns and certain items of clothing from the house, which items are set forth on the receipt marked Defendant's Exhibit #H. These items are also contained in the Kalinski list marked Defendant's Exhibit #G. The Court specifically finds that there was no search by the police of the premises at 312 Seames Drive at this time by either Sergeant McBain or by Inspector Glennon. The items taken by the police, Defendant's Exhibit #H, were either voluntarily surrendered to the police by Mrs. Coolidge or Mrs. Coolidge did not resist the taking of these items."

5. On Page 5 Line 35, the sentence be amended to read as follows: "When they left the house at 11:15 P.M., they told Mrs. Coolidge, and she did not at least object, that they proposed to look in the two automobiles which were parked in the driveway. Mrs. Coolidge gave them the keys to the cars for this purpose. From 11:15 P.M. to 11:30 P.M., Sergeant McBain and Inspector Glennon conducted a search of the two automobiles. Mrs. Coolidge remained in the house during this period of time."

6. On Page 5 Line 38, the sentence be amended to read as follows: "During this period of time, they took certain items from the motor vehicles. A box of .22 calibre long rifle bullets, a pair of trousers, and a paring knife were taken from the 1951 Pontiac and possibly a coat hanger was taken from the 1963 Chevrolet. A single glove was also taken from one of the automobiles. The Court finds that at no time on February 2, 1964 did the police ask the permission of Mrs. Coolidge to take any of these items, that at no time on February 2, 1964 did Mrs. Coolidge actually know that any items were being taken, and that at no time did Mrs. Coolidge agree that these items could be taken. She was not given a list of these items nor a receipt for them."

7. On Page 7 Line 23, the sentence be amended to read as follows: "The Court finds that all during the period covered by the testimony on this motion, Mr. and Mrs. Coolidge, Jr. were living in the premises at 312 Seames Drive as husband and wife with their daughter and that Mr. Coolidge was the sole owner of said premises."

8. On Page 7 Line 34, the sentence be amended to read as follows: "The Court finds as a matter of fact that at no time on February 2 did the police request permission of Edward H. Coolidge, Jr. to search or to take items from his house or cars and that at no time on February 2 or 3 did the police inform Edward H. Coolidge, Jr. of the fact that they had searched and taken items from his house or cars. The Court further finds that Mrs. Coolidge received no permission from Edward H. Coolidge, Jr. to surrender any items of property to the police."

STATE'S REQUEST FOR FINDINGS OF FACT

NOW COMES William Maynard, Alexander Kalinski, and Emile R. Bussiere, Counsel for the State of New Hampshire in the above entitled cases and request that the Court make the following findings of fact by amending the "Tentative Findings" as follows:

1. Page 5, Line 44. The State requests that the Court reconsider its finding that Mrs. Coolidge, Jr. had no knowledge of any Constitutional Rights. It is conceded that a finding that she was not given any explanation by the Police of any Constitutional Rights would be warranted but that there is no evidence to support any finding by the Court that she had no knowledge of any Constitutional Rights whatsoever.

2. Page 6, Lines 13, 14 and 15 by striking out everything on line 1 after the words "Inspector Glennon," and everything on lines 14 and 15 and substituting in place thereof the following:

"The Court finds that the defendant's wife freely offered the firearms to the Police and made a voluntary delivery of said firearms without receiving any demand therefor."

"The remaining items received from the house were freely delivered to the Police by the defendant's wife."

In this connection the change in the Court's tentative findings is requested in that the State objects to the word "surrender" used on Line 14 of Page 6 because this word may imply a compliance with a demand. In fact the evidence clearly indicates that the firearms were delivered by the defendant's wife after she had offered them to the Police, one officer declining and the second officer accepting the offer. Certain portions of the evidence as quoted on Exhibit A attached hereto clearly support the State's position in this respect. This part of the tentative findings of the Court should clearly differentiate between the items "inside and outside" in that the applicable law may vary in each case. The State further suggests that the alternative stated on Line 15 of Page 6 is not applicable to the items obtained in the house.

3. The State requests that the Court reconsider its tentative finding contained on Page 6, Lines 18, 19 and 20. The Court will recall that the evidence as to the composure of the defendant's wife on February 2, 1964 was conflicting. It is submitted that it is only natural for the defendant's wife to be extremely nervous at this stage of the proceeding after her husband has been charged with such an offense. However, such condition is not necessarily indicative of her composure sixteen days before her husband's arrest for this crime.

4. The Court is requested to make the following additional finding of fact:

"The officers that called at the Coolidge residence on February 2, 1964 were dressed in plain clothes and acted reasonably in every manner in the pursuit of what must be considered as a very general investigation."

DEFENDANT'S REQUESTS FOR RULINGS OF LAW

NOW COME J. Murray Devine, Matthias J. Reynolds, and John A. Graf, counsel for Edward H. Coolidge, Jr., and request that the Court make the following rulings of law:

1. The search warrants are invalid and were illegally issued because the Attorney-General was not and could not be a "neutral and detached magistrate", as is required by Fourth Amendment standards.

2. The complaints in the search warrants failed to contain sufficient facts to enable a magistrate to find probable cause.

3. Because the search warrants were illegally issued, all items taken must be returned and all evidence derived from them rendered inadmissible.

4. That on February 2, there was a search by the police without a warrant of, at least, part of the defendant's home.

5. That on February 2, there was a seizure by the police without a warrant of items owned by the defendant in his home.

6. On February 2, there was a search by the police of defendant's automobiles.

7. On February 2, there was a seizure by the police of certain items from the defendant's automobiles.

8. The Court rules that the State presented no evidence to show that the taking of any items on February 2, from the defendant's home or vehicles, was incident to an arrest.

9. The Court rules that the State presented no evidence to show any exceptional circumstances that would justify the taking of any items from the defendant's home or vehicles on February 2, without a warrant.

10. There was no express authority given by the defendant to the police, or to his wife, to take items from his home and vehicles on February 2, without a warrant.

11. The defendant's wife had no implied authority to hand over to the police, or permit the police to take items from his home and vehicles on February 2, when they had the time and opportunity to ask the permission of the defendant, and failed to do so.

12. The defendant's wife, solely by virtue of her status as his wife, had no implied authority to hand over to the police property belonging to the defendant, on February 2.

13. The police obtained items from defendant's home and vehicles on February 2, without warrants, and as a result of actual coercion on defendant's wife.

14. The police obtained items from defendant's home and vehicles on February 2, without warrants, and as a result of implied coercion on defendant's wife.

15. The items taken by the police from the defendant's home on February 2, were taken in violation of the defendant's Constitutional rights, and therefore must be returned and all evidence derived from them rendered inadmissible.

16. The items taken by the police from the defendant's automobiles on February 2, were taken in violation of the defendant's Constitutional rights, and must be returned and all evidence derived from them rendered inadmissible.

MOTION FOR FURTHER HEARING UPON DEFENDANT'S
PETITION TO QUASH—Filed Sept. 18, 1964

The State of New Hampshire respectfully moves that a further brief hearing be held in connection with the defendant's Petition to Quash for the purpose of introducing certain evidence not developed at the previous hearing.

At such hearing, if this motion is granted by the Court, the State would offer to prove the following facts:

1. That the defendant Coolidge saw his firearms at the Manchester Police Station on the evening of Sunday, February 2, 1964, after they had been brought to the Station by Det. Sgt. McBain and Inspector Glennon.
2. That the defendant Coolidge was free on bail on the larceny charge from February 3, 1964, until February 19, 1964, when he was arrested upon the murder complaint.
3. That the defendant Coolidge offered to sell to Inspector Glennon one of his firearms which were obtained by the police on Sunday, February 2, 1964.

4. That although the defendant Coolidge was represented by counsel from February 3, 1964, to February 19, 1964, during that time Coolidge made no request nor demand for the return of his firearms and the other items obtained by the police from his home on Sunday, February 2, 1964.
5. That Det. Sgt. Paul Doyon and Officer Maurice Leclerc made a search of the defendant Coolidge's two automobiles on Tuesday, January 28, 1964, with the permission of the defendant Coolidge.

Dated this 18th day of September, 1964.

(Order of Court on motion: "Oct. 6, 1964 Motion granted. Exception noted. Robert F. Griffith, Presiding Justice.")

FINDING OF THE COURT ON DEFENDANT'S
PETITION TO QUASH

The Court had previously granted a motion filed by the State for further hearing upon Defendant's Petition to Quash, and testimony has been taken this morning in furtherance of this motion. This motion contained an offer to prove five specific statements of fact.

The Court finds that the evidence presented this morning, as stipulated to, proves these facts, but further finds that it would not affect any previous finding of fact by the Court.

Officer Leclerc who made the search on January 28th of the automobile testified that he did not consider he had any blanket permission to examine the cars at any other time.

ROBERT F. GRIFFITH
Presiding Justice

October 13, 1964

RULINGS OF THE COURT ON STATE'S REQUESTS
FOR FINDINGS OF FACT

The Court denies the State's request No. 1 in paragraph 1 of their requests for findings of fact.

The Court in ruling on request No. 2 in paragraph 2 of the State's requests finds as follows: To strike out in its previous finding all of the language on lines 13, 14 and 15 on page 6 following the words "Inspector Glennon" and substitute a period for the comma following the words "Inspector Glennon".

In ruling on the State's request in paragraph 3, the Court amends its findings of fact on page 6 beginning with the *third* new paragraph on page 6, line 17, by striking out that paragraph and substituting therefor the following: "The Court finds that Mrs. Coolidge, Jr. is an extremely thin, nervous woman at the present time, and that, assuming her condition is not greatly dissimilar today than what it was then, she would have been more nervous than a normal person of her age would have been."

The Court makes the following additional finding of fact in ruling upon the State's request No. 4: "The officers that called at the Coolidge residence on February 2, 1964, were dressed in plain clothes and acted courteously in every manner in the pursuit of what must be considered as a very general investigation of the Mason murder.

ROBERT F. GRIFFITH
Presiding Justice

October 13, 1964

RULINGS OF THE COURT ON DEFENDANT'S REQUESTS FOR FINDINGS OF FACT

The Court grants the Defendant's request to amend the Court's preliminary findings of fact No. 1, which adds the date of February 3, 1964 to the previous finding of the time with which the defendant was formerly charged with the theft of three hundred dollars.

The Court denies the request to change finding No. 2.

The Court grants defendant's request No. 3 to amend the previous finding as follows: On page 5, line 8, the sentence is amended to read as follows: "She returned to her home in a 1963 Chevrolet, a motor vehicle owned by her husband, Edward H. Coolidge, Jr."

The Court finds that on Request No. 4 of the defendant it has previously ruled on this request to some extent in the rulings on the State's Requests for Findings, but in order to specifically refer to exhibits spoken of here the Court amends its finding as follows: On page 5, line 30, "McBain and Glennon, with the consent of Mrs. Coolidge, took the four guns and certain items of clothing from the house, which items are set forth on the receipt marked "Defendant's Exhibit H". These items are also contained in the Kalinski list marked "Defendant's Exhibit G". In all other respects the findings made on the State's requests are to remain the same.

The Court grants request No. 5 and amends its findings as follows: On page 5, line 35, the sentence is amended to read as follows: "When they left the house at 11:15 P.M. they told Mrs. Coolidge and she did not, at least, object, that they proposed to look in the two automobiles which were parked in the driveway. Mrs. Coolidge gave them the keys to the cars for this purpose. From approximately 11:15 P.M. to 11:30 P.M. Sergeant McBain and Inspector Glennon conducted a search of the two automobiles. Mrs. Coolidge remained in the house during this period of time."

In Request No. 6, the Court amends its findings as they relate to the remainder of the paragraph previously referred to, beginning on page 5, line 38, to read as follows: "During this period of time they took certain items

from the motor vehicles. A box of twenty-two caliber long rifle bullets, a pair of trousers and a paring knife were taken from the 1951 Pontiac. A single glove was also taken from one of the automobiles."

The Court finds that on February 2, 1964, Mrs. Coolidge knew that some items were being taken but did not know specifically what items were being taken, and did not specifically agree to those items being taken. She was not given a list of these items nor a receipt for them.

The Court adds to its previous findings at the end of the first sentence that ends on line 4, "Mr. Coolidge was the sole owner of said premises subject to his wife's right of dower."

On Request No. 8 the Court adds the following finding to its previous findings: "The Court finds that at no time on February 2d did the police request permission of Edward H. Coolidge, Jr. to search or take items from his house or cars, and that at no time on February 2d or 3d did the police inform Edward H. Coolidge, Jr. that they had taken items from his house or cars. The Court finds, however, that Edward H. Coolidge, Jr., at about 2:30 A.M. on February 3d saw the guns and clothing at the Police Station at the time he was being charged with the theft of the three hundred dollars.

The Court finds that Mrs. Coolidge received no specific permission from Edward H. Coolidge, Jr. to give or surrender any items of property to the Police.

ROBERT F. GRIFFITH
Presiding Justice

October 13, 1964

COMPOSITE OF FINDINGS BY THE COURT ON DEFENDANT'S
PETITION TO QUASH SEARCH WARRANTS, TO RELEASE
ITEMS OF PROPERTY SEIZED, ET CETERA SUBMITTED BY
THE DEFENDANT

GRIFFITH, J.

After hearing on petition filed July 22, 1964, the Court finds that this hearing on the motion falls into two general categories of items searched and/or seized. First are a group of items which are contained either on the present list furnished by Assistant Attorney General Kalinski or which will be contained in an amended list to be filed of certain items claimed to have been seized without a search warrant. The circumstances surrounding the acquisition by the police of the items referred to are as follows:

On February 2nd, around one p.m. in the afternoon, Edward Coolidge, Jr. at the request of the police and as a result of a prior interview with Sgt. Doyon and Officer LeClair, went to the police station for the ostensible purpose of taking a lie detector test. His appearance at the police station at one o'clock on Sunday, February 2nd was as a result immediately of a telephone call received by him at his home from Officer LeClair at eight a.m. in the morning. Some time shortly before four o'clock in the afternoon, Coolidge went to Concord in company with Officer LeClair and Inspector Glennon, to the State Police Barracks, where he took a lie detector test given him by Sergeant McBain of the State Police. He returned following this test, in an automobile, to Manchester, reaching Manchester at about seven o'clock in the evening, with the same officers.

The Court finds that his presence both at the police station and in the car to and from Concord was, at least up to this point, voluntary. In the course of his lie detector test, the police testified that he admitted the theft of some three hundred dollars from his employer, Cote Brothers, and there was some conversation with Inspector Glennon on the way back to Manchester as to whether or not he would be charged with this theft. He was not

formally charged with the theft of the three hundred dollars until two-thirty a.m. in the morning of February 3, 1964; and the Court finds that he never at any time requested an opportunity to leave the station prior to being charged, but that had he requested it he probably would have been detained either with a formal charge or without a formal charge being made.

Mrs. Joanne Coolidge, wife of Edward Coolidge, Jr., who had been informed of the requested presence of Edward Coolidge, Jr. at the police station, was called for by the police herself some time about two-thirty, by two policemen who took her in a police car to the station, where she had a short conversation with her husband and a conversation with Captain Stipps of the police force, which is not particularly relevant to this case, except that she alleges and he agrees that he urged her to tell the truth or she might be in trouble if she didn't. She returned to her home in a 1963 Chevrolet, a motor vehicle owned by her husband, Edward H. Coolidge, Jr. Mr. Coolidge was the sole owner of said premises subject to his wife's right of dower.

Mrs. Coolidge, Sr., mother of Edward Coolidge, Jr. had been called to the Coolidge home when Mrs. Coolidge, Jr. went to the police station at about two-thirty, for the purpose of babysitting, and was at the house at ten-thirty p.m. when Sergeant McBain and Inspector Glennon called at the home, dressed in plain clothes. They went to the house generally for the purpose of questioning Mrs. Coolidge, Jr. about the theft from Cote Brothers, and further particulars about the Mason murder, on which both Sergeant McBain and Inspector Glennon were generally assigned. In the course of their questioning they inquired if Mr. Coolidge, Jr. had any firearms. They were informed by Mrs. Coolidge that he had, and she went, in company with them, into the bedroom, to a closet where there were four guns—two shotguns and two rifles referred to in the list submitted by Assistant Attorney General Kalinski.

At this time the police and investigating authorities had no knowledge of the exact calibre or type of weapon that they were looking for, it being generally the theory

of the police at that time that the weapon might very well be a small handgun or revolver. The police had previously been informed by Edward Coolidge, Jr. that he possessed at least three firearms, which they had not asked to examine previously. McBain and Glennon, with the consent of Mrs. Coolidge, took the four guns and certain items of clothing from the house, which items are set forth on the receipt marked "Defendant's Exhibit H". These items are also contained in the Kalinski list marked "Defendant's Exhibit G".

When they left the house at 11:15 P.M. they told Mrs. Coolidge and she did not, at least, object, that they proposed to look in the two automobiles which were parked in the driveway. Mrs. Coolidge gave them the keys to the cars for this purpose. From approximately 11:15 P.M. to 11:30 P.M. Sergeant McBain and Inspector Glennon conducted a search of the two automobiles. Mrs. Coolidge remained in the house during this period of time. During this period of time they took certain items from the motor vehicles. A box of twenty-two caliber long rifle bullets, a pair of trousers and a paring knife were taken from the 1951 Pontiac. A single glove was also taken from one of the automobiles.

The Court finds that on February 2, 1964, Mrs. Coolidge knew that some items were being taken but did not know specifically what items were being taken, and did not specifically agree to those items being taken. She was not given a list of these items nor a receipt for them.

At the request of the defendant the Court would find that Mrs. Coolidge, Jr. had no knowledge of any constitutional rights, either by explanation of the police or otherwise, to deny the police the right to examine these, but finds that at that point Mrs. Coolidge fully intended to cooperate with the police in every way and to furnish them freely with both information and guns in order, as she stated to clear her husband of any suspicion.

Immediately after the police arrived, Mrs. Coolidge, Sr. left, at the request of the police, and Mrs. Coolidge was almost immediately informed by the police that her husband was in trouble because of the larceny and that it was doubtful if he would return that night.

The Court specifically finds that there was no search by the police of the premises at this time by either Sergeant McBain or by Inspector Glennon.

The Court finds that Mrs. Coolidge, Jr. is an extremely thin, nervous woman at the present time, and that, assuming her condition is not greatly dissimilar today than what it was then, she would have been more nervous than a normal person of her age would have been.

The Court does find that there was a search of the two automobiles and a taking of items, and there is a question as to whether or not it was done with the proper consent or a waiver of constitutional rights.

By use of the word "seizure", the Court makes no legal conclusion in these findings at this point.

The Court further finds that as part of the facts surrounding the taking of the items from the house, Mrs. Coolidge, Jr., at some point prior to the taking by the police, asked them if they wanted the guns, and one of the policemen said "No", and the other said "Yes".

The officers that called at the Coolidge residence on February 2, 1964, were dressed in plain clothes and acted courteously in every manner in the pursuit of what must be considered as a very general investigation of the Mason murder.

The Court finds that the principal purpose of the police visit to the house was in connection with the Mason murder.

The Court finds that the officers were served with coffee by Mrs. Coolidge and that they left the house at approximately eleven-fifteen p.m.

The remainder of the motion relates to the validity of four search warrants, all issued on February 19th, 1964, all at approximately the same time, and all approximately at the same time that the warrant for the arrest was issued for the murder of Pamela Mason.

These warrants, which have been marked as exhibits, were for search of the premises owned by Mr. Coolidge, Jr., at 312 Seames Drive, a laundromat at 712 Valley Street, and the two automobiles—one a Pontiac and the other a Chevrolet. The search warrants all enumerated the same items to be looked for in each place, and the

returns show various things collected from each place. The Court finds that the search warrants were issued by the Attorney General, acting as a Justice of the Peace, and it is agreed that the Attorney General was in charge of the investigation of the Mason case.

It is further found that the complaints for the search warrants were drafted by the Attorney General's office, and Chief McGranahan, who signed all of them as complainant, made oath before William Maynard, a Justice of the Peace. No evidence was offered by either the State or the defendant at this time as to what, if any, evidence was offered in addition to the complaints, prior to the issuance of the warrants.

The Court finds that the laundermat was searched during the forenoon of February 20th, the house was searched after two p.m. on February 20th, the Pontiac on Friday, February 21st, and the Chevrolet also on February 21st. The Mason warrants were served at eight p.m., on February 19, 1964, to arrest Coolidge on a charge of murder. Then both he and his wife were required to leave the premises, by the police. The locks on the house were changed by the police the following day.

The Court would find that the police's purpose in removing Mrs. Coolidge, Jr. from the house that night at least was solely for her own protection from news media.

The Court finds that all during the period covered by the testimony on this motion, Mr. and Mrs. Coolidge were living in the home as husband and wife, with their child, and that she, as his wife, was entitled to occupy the premises.

The Court finds that on January 28th of 1964, two police officers, Doyon and LeClair, were questioning Mr. Coolidge with Mrs. Coolidge in the house, and that he showed them some guns at that time, which Mrs. Coolidge saw being shown to them. The police at that time did not take the guns or request the guns, and the officers who called on the night of February 2nd had no knowledge of this previous visit at that time.

The Court finds that at no time on February 2nd did the police request permission of Edward H. Coolidge, Jr. to search or take items from his house or cars, and that

at no time on February 2nd or 3rd did the police inform Edward H. Coolidge, Jr. that they had taken items from his house or cars. The Court finds, however, that Edward H. Coolidge, Jr. at about 2:30 A.M. on February 3rd saw the guns and clothing at the Police Station at the time he was being charged with the theft of the three hundred dollars.

The Court finds that Mrs. Coolidge received no specific permission from Edward H. Coolidge, Jr. to give or surrender any items of property to the Police.

The Court finds as a fact that during the latter part of January and the early part of February the police were questioning many people and from time to time had taken various weapons, with the consent of the people, to be examined, in the vicinity of Manchester.

DEFENDANT'S EXCEPTION'S—Filed November 5, 1964

In the above action, may the record reflect that the defendant excepts to the Court's denial in whole or in part of the following Requests for Findings of Fact; Request #2, Request #4 and Request #8. The defendant also excepts to the partial granting of State's Request #4.

Although I believe the record is clear, the Defendant also excepts to the Court's granting of the State's Motion for Further Hearing dated September 18th. The Defendant further excepts to the following factual findings of the Court:

- (1) That Joanne Coolidge had any knowledge that items were being taken from the motor vehicle.
- (2) That no search was conducted from the Coolidge premises on February 2, 1964.
- (3) That the Defendant, Edward H. Coolidge, Jr., saw any weapons at the Police Station on February 3,

1964.

FURTHER EXCEPTIONS BY DEFENDANT—
Filed Nov. 6, 1964

The defendant further excepts to any finding of fact that the defendant Coolidge was represented by counsel on Sunday, February 2, 1964, or Monday, February 3, 1964. No evidence was produced at the hearing held October 13, 1964, that would justify any such factual conclusion and any such allegation in paragraph 4 of the State's Motion for Further Hearing was not substantiated by factual testimony. For the purpose of clarifying the record, the defendant intends to submit a true copy of the appearance card filed by the office of Broderick, Craig & Bourque on behalf of the defendant Coolidge.

DEFENDANT'S EXCEPTIONS—Filed Nov. 10, 1964

May the record show that the defendant excepts to the failure of the Court to make rulings of law relative to the defendant's Petition to Quash and Suppress dated July 22, 1964.

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.

SEPTEMBER TERM, 1964

THE STATE OF NEW HAMPSHIRE

vs.

EDWARD H. COOLIDGE, JR.

RESERVED CASE

This is a motion by the Defendant, calling for a return to him of all his items taken by the police with warrants as well as without warrants, coupled with a prayer that all evidence derived from these items be rendered inad-

missible. Subsequent to the hearings the Court made Findings of Fact, but did not rule on the motion or make rulings of law.

During the course of the hearings, the State excepted to certain rulings of the Court admitting and excluding evidence, which exceptions appear more particularly in the transcript.

Also, during the course of the hearings, the defendant excepted to certain rulings of the Court admitting and excluding evidence, and allowing the State to re-open the hearings for further evidence, which exceptions appear more particularly in the transcript.

These and other exceptions appear more particularly in the transcript and in the appendix.

All questions of law raised by the foregoing exceptions or any exceptions appearing in the transcript or appendix are reserved and transferred without ruling.

The indictments, the Motion of the defendant to Quash and Suppress evidence dated July 22, 1964, the Findings of the Court dated September 1, 1961, the defendant's Requests for Findings of Fact, the defendant's Requests for Rulings of Law, the State's Requests for Findings of Fact, the State's motion for Further Hearing dated September 18, 1964, and Court's Ruling thereon, the Rulings of the Court dated October 13, 1964, on the State's and the Defendant's Requests for Findings of Fact, the Defendant's exceptions to rulings, together with a list of the exhibits transferred are to be printed as an appendix. The entire oral proceedings are to be transcribed.

RESERVED AND TRANSFERRED

ROBERT F. GRIFFITH
Presiding Justice

OPINION MARCH 11, 1965—STATE V. COOLIDGE,
106 N.H. 186

Hillsborough,

No. 5316.

STATE

v.

EDWARD H. COOLIDGE, JR.

Argued January 8, 1965.

Decided March 11, 1965.

1. The provisions of the Fourth Amendment to the United States Constitution are enforceable against the states through the Due Process Clause of the Fourteenth Amendment and all evidence obtained by searches and seizures in violation thereof is inadmissible in a state court.

However, if the evidence is not obtained by search and seizure but is voluntarily handed to the police these constitutional guarantees are not involved.

2. In criminal law enforcement a search ordinarily implies a quest by an officer of the law—a prying into hidden places for that which is concealed; a seizure contemplates forcible dispossession of the owner.
3. Hence, where the police in the process of a general investigation of a murder were voluntarily shown firearms and certain articles of respondent's clothing at his residence by his wife without coercion and they were taken away by the officers with her consent it was held that the objects were not secured by search and seizure and not obtained in violation of the Constitution of this state or that of the United States and are admissible in evidence if found relevant and material at the trial.
4. The validity of a search and seizure is to be determined by reference to whether the particular search and seizure was reasonable or unreasonable and that determination is to be made on a case-to-case basis in the light of the surrounding circumstances.

5. The reasonableness of a search and seizure may not be determined solely by reference to general rules or to concepts of authority, agency or privity.
6. A search by the police, in the conduct of a general investigation of a murder, of certain motor vehicles of the respondent at his residence with the consent of his wife who had exclusive physical possession and control over them at the time was held not to be unreasonable or unlawful where there was no duress, coercion, stealth or fraud in the conduct of the officers in obtaining her consent which was freely and intelligently given, and her conduct in giving consent to search the vehicles to which she had the keys was the normal action of a wife, and the conduct of the officers in the search was not ruthless or highhanded, or unfair, unreasonable or oppressive.
7. In criminal law enforcement the standard for obtaining a search warrant under the Fourth Amendment to the United States Constitution is enforced against the states through the Fourteenth Amendment.
8. It is a constitutional requirement that search warrants be issued only upon probable cause supported by oath or affirmation.
9. Probable cause exists where the facts and circumstances within the officer's knowledge and of which he had reasonable trustworthy information are in themselves sufficient to warrant a man of reasonable caution in the belief that an offense has been or is being committed.
10. Search warrants issued by the Attorney General as justice of the peace on affirmation under oath by a chief of police that the respondent had committed murder and containing his sworn statement that he had probable cause to suspect that certain objects used in the commission of the crime were concealed at specified locations, together with other oral evidence presented to the justice of the peace when issuing the warrants, complied with the requirements of the statute (RSA 595:1) and were properly issued on probable cause.

11. At a preliminary hearing to suppress evidence obtained on search warrants the respondent as the moving party has the burden of proving that the evidence was illegally obtained.
12. Upon the offer of such evidence at the trial, on objection that the evidence was illegally obtained, the State has the burden of presenting evidence to the Trial Court of facts in existence when the warrants were issued which established to the magistrate the probable cause upon which their issuance was based.
13. Certain articles acquired under search warrants were held to be the type of property which could be sought and seized by search warrant under the statute (RSA ch. 595), and upon their offer in evidence the State will have the burden of proving that they were properly seized.
14. The finding of facts and transfer to the Supreme Court of questions of law arising at a preliminary hearing in the Superior Court on a motion to suppress evidence allegedly obtained by illegal search and seizure was proper and authorized by statute (RSA 419:17).

Motion by the defendant for the return of certain items of personal property obtained without a search warrant from his person, home and motor vehicles; and for the suppression of all evidence and information produced from, by or as a result thereof.

Defendant further moved that four search warrants issued on February 19, 1964, be quashed as illegally issued and unlawfully obtained; and for the suppression of any and all evidence and information produced by, from, or as a result of these warrants under which searches and seizures were made on February 20 and 21, 1964.

On February 19, 1964, the defendant was arrested at about 8:00 P.M. under a warrant charging him with the murder of Pamela Mason on January 13, 1964. The four search warrants above and the arrest warrant were all issued at approximately the same time on February 19, 1964.

After hearings, the Court (*Griffith, J.*) made certain findings of fact and transferred without ruling, subject to defendant's exception, all questions of law raised by his motion. Also transferred to this court were all exceptions taken by the State and by the defendant during the course of and subsequent to the hearings.

William Maynard, Attorney General, *Alexander J. Kalinski*, Assistant Attorney General, and *Emile R. Bussiere*, county attorney (*Mr. Kalinski orally*), for the State.

J. Murray Devine (now deceased), *Matthias J. Reynolds* and *John A. Graf* (*Messrs. Reynolds and Graf orally*), for the defendant.

LAMPRON, J. On January 13, 1964, Pamela Mason, a young girl residing in Manchester, disappeared from her home and eight days later, on January 21, 1964, her body was found. On January 28, 1964, Sergeant Doyon and Officer LeClair called at defendant's home, of which he was the sole owner, and where he lived with his wife, Joanne, aged twenty-seven, and their two-year-old daughter. In the presence of his wife, these police officers questioned him relative to "his whereabouts, his actions and activities on January 13th." The Trial Court found that Coolidge "showed them some guns at that time, which Mrs. Coolidge saw being shown to them. The police at that time did not take the guns or request the guns." Officer LeClair asked the defendant if he was willing to take a lie-detector test. Coolidge said "he was" and "he would prefer to take it on a Sunday."

February 2, 1964, the following Sunday, Officer LeClair telephoned the defendant about taking such a test. Coolidge came to the Manchester police station about one in the afternoon. About four, in the company of two police officers, he went to the State Police headquarters in Concord to take a lie-detector test. There was testimony that in the course of this test the defendant admitted the theft of some three hundred dollars from his employer; and that on the way back to Manchester,

where they arrived about seven, the defendant had some conversation with an officer as to whether he would be charged with the theft. He was not formally charged therewith until two-thirty the following morning, February 3, 1964. The Trial Court found that defendant's "presence both at the police station and in the car to and from Concord was, at least up to this point, voluntary." The Court further found that defendant "never at any time, requested an opportunity to leave the station prior to being charged, but that had he requested it he probably would have been detained either with a formal charge or without a formal charge being made."

The Court found that on February 2, 1964, before the trip to Concord for the test "Mrs. Joanne Coolidge . . . who had been informed of the requested presence of Edward . . . [her husband] at the police station, was called for . . . about two-thirty, by two policemen who took her in a police car to the station, where she had a short conversation with . . . Captain Stipps of the police force . . . [in which] she alleges and he agrees that he urged her to tell the truth or she might be in trouble if she didn't. She returned to her home in a 1963 Chevrolet, a motor vehicle owned by her husband."

At ten-thirty that same evening of February 2, 1964, Sergeant McBain, of the State Police, and Inspector Glennon, of the Manchester police, called at the Coolidge home. The Trial Court found that the officers "went to the house generally for the purpose of questioning Mrs. Coolidge . . . about the theft from Cote Brothers, and further particulars about the Mason murder, on which both . . . were generally assigned. . . . At this time the police and investigating authorities had no knowledge of the exact calibre or type of weapon that they were looking for, it being generally the theory of the police at that time that the weapon might very well be a small handgun or revolver." Sergeant McBain testified that he did not know of the prior visit to the Coolidge home by other officers on January 28, 1964.

McBain and Glennon, both dressed in plain clothes, identified themselves as police officers and Mrs. Coolidge "let them into the house." Defendant's mother, who was

babysitting there, left shortly thereafter at the request of the officers. The Trial Court found further that "Mrs. Coolidge was almost immediately informed by the police that her husband was in trouble because of the larceny and that it was doubtful if he would return that night." "In the course of their questioning they inquired if Mr. Coolidge . . . had any firearms. They were informed by Mrs. Coolidge that he had, and she went, in company with them, into the bedroom, to a closet where there were four guns—two shotguns and two rifles." "McBain and Glennon, with the consent of Mrs. Coolidge took the four guns and certain items of clothing from the house" and gave her a receipt for them.

"At the request of the defendant the Court would find that Mrs. Coolidge . . . had no knowledge of any constitutional rights, either by explanation of the police or otherwise, to deny the police the right to examine these, but finds that at that point Mrs. Coolidge fully intended to cooperate with the police in every way and to furnish them freely with both information and guns in order, as she stated, to clear her husband of any suspicion." The Court also found that the "officers that called at the Coolidge residence on February 2, 1964 . . . acted courteously in every manner."

Article 19th, Part I of the Constitution of New Hampshire provides that "Every subject hath a right to be secure from all unreasonable searches and seizures of his preson, his houses, his papers, and all this possessions." It also recites the "formalities" required for the issuance of search warrants.

The Fourth Amendment to the Constitution of the United States reads as follows: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The provisions of the Fourth Amendment are enforceable against the states through the Due Process Clause of the Fourteenth Amendment and all evidence obtained

by searches and seizures in violation thereof is inadmissible in a state court. *Mapp v. Ohio*, 367 U. S. 643, 655; *Ker v. California*, 374 U. S. 23, 30. However if the evidence in question is not obtained by search and seizure but is voluntarily handed to the police officers these constitutional guarantees are not involved. *State v. Nelson*, 105 N. H. 184, 191; *United States v. Pate*, 324 F. 2d 934, 935 (7th Cir. 1963); *State v. Morriss*, 243 S. C. 225, 234. As to the four guns and certain items of defendant's clothing which the officers took from the Coolidge residence on the night of February 2, 1964, the Trial Court specifically found "that there was no search by the police of the premises at this time by either Sergeant McBain or by Inspector Glennon." The Court further found that these officers took those objects "with the consent of Mrs. Coolidge." The Trial Court also found "as a fact that during the latter part of January and the early part of February the police were questioning many people and from time to time had taken various weapons, with the consent of the people, to be examined, in the vicinity of Manchester."

I. A search ordinarily implies, a quest by an officer of the law, a prying into hidden places for that which is concealed. A seizure contemplates forcible dispossession of the owner. *Weeks v. United States*, 232 U. S. 383, 397; *United States v. Pate*, 324 F. 2d 934, 935 (7th Cir. 1963); *People v. Woods*, 26 Ill. 2d 557; *State v. Baron*, 106 N. H. 149. The Trial Court properly found on the evidence that the principal purpose of the visit to defendant's residence by officers McBain and Glennon on the evening of February 2, 1964, "was in connection with the Mason Murder" and "in the pursuit of what must be considered as a very general investigation of the Mason Murder."

McBain and Glennon testified as follows: Dressed in plain clothes they knocked at the side door of the Coolidge house, identified themselves as police officers and were invited in by defendant's wife. They all sat in the living room. Out of courtesy, they told Mrs. Coolidge that it was very possible that her husband would be detained in the station that evening. They told her that as part

of their investigation of the Mason case guns owned by various other persons had been taken for tests. She stated they had four guns in the house. When she went to the bedroom closet to get the guns, they went with her. They "did not look into the closet, or feel around" and they did not look around any of the other areas of the house except where they were invited.

These officers further testified that Mrs. Coolidge said she had nothing to hide and had no objection to the officers taking these four guns along for tests. Also that she pointed out some of her husband's clothing and inquired if it might be something they were looking for and had no objection to their having them. They testified further that Mrs. Coolidge appeared to be very calm and very cooperative and that they had a cup of coffee with her.

Mrs. Coolidge testified that when she asked the officers if they wanted the guns one said "No" and the other said "We might as well take them" and she said "If you would like them, you may take them."

The evidence warranted the Trial Court's finding that "there was no search by the police of the premises"; and that "Mrs. Coolidge fully intended to cooperate with the police in every way and to furnish them freely with both information and guns in order, as she stated, to clear her husband of any suspicion."

On the facts and circumstances of this case it is our opinion that the four guns and certain objects of defendant's clothing obtained from his residence on the night of February 2, 1964, by officers McBain and Glennon were not secured by search and seizure. On the contrary they were voluntarily shown and given to them by Mrs. Coolidge without coercion on their part and were taken away by the officers with her consent. Consequently they were not obtained in violation of the Constitution of our state or that of the United States and are not subject to being returned to the defendant and are admissible in evidence if found relevant and material at the trial. *State v. Nelson*, 105 N. H. 184, 191; *United States v. Pate*, 324 F. 2d 934, 935 (7th Cir. 1963); *State v. Mor-*

ris, 243 S. C. 225, 234. See *Brown v. State*, 372 P. 2d 785 (Alaska 1962).

II. When the two officers left the Coolidge residence about 11:15 P.M. that night, the Trial Court found that "they told Mrs. Coolidge and she did not, at least, object, that they proposed to look in the two automobiles which were parked in the driveway. Mrs. Coolidge gave them the keys to the cars for this purpose. From approximately 11:15 P.M. to 11:30 P.M. Sergeant McBain and Inspector Glennon conducted a search of the two automobiles. Mrs. Coolidge remained in the house during this period of time. During this period of time they took certain items from the motor vehicles."

"The Court finds that on February 2, 1964, Mrs. Coolidge knew that some items were being taken but did not know specifically what items were being taken, and did not specifically agree to those items being taken. She was not given a list of these items nor a receipt for them."

The Trial Court made the further findings which like the previous are supported by the record: "The Court finds that at no time on February 2nd did the police request permission of Edward H. Coolidge, Jr. to search or take items from his house or cars, and that at no time on February 2nd or 3rd did the police inform Edward H. Coolidge, Jr. that they had taken items from his house or cars. The Court finds, however, that Edward H. Coolidge, Jr. at about 2:30 A.M. on February 3rd saw the guns and clothing at the police station at the time he was being charged with the theft of the three hundred dollars.

"The Court finds that Mrs. Coolidge received no specific permission from Edward H. Coolidge, Jr. to give or surrender any items of property to the Police.

"The Court finds that all during the period covered by the testimony on this motion, Mr. and Mrs. Coolidge were living in the home as husband and wife, with their child, and that she, as his wife, was entitled to occupy the premises." The Court also found that "Mr. Coolidge was the sole owner of said premises subject to his wife's right of dower.

"The Court finds that Mrs. Coolidge, Jr. is an extremely thin, nervous woman at the present time, and that, assuming her condition is not greatly dissimilar today than what it was then, she would have been more nervous than a normal person of her age.

"The officers that called at the Coolidge residence on February 2, 1964, were dressed in plain clothes and acted courteously in every manner in the pursuit of what must be considered as a very general investigation of the Mason murder."

As appears previously the Trial Court stated it would find on request that Mrs. Coolidge had no knowledge of any constitutional right to deny the police the right to examine any objects and found that "Mrs. Coolidge fully intended to cooperate with the police in every way."

Finally the Court found "that there was a search of the two automobiles and a taking of items, and there is a question as to whether or not it was done with the proper consent or a waiver of constitutional rights."

The law is clear that searches of automobiles must meet the test of reasonableness under the Fourth Amendment before evidence obtained thereby is admissible. *Pres-ton v. United States*, 376 U. S. 364, 366. The reasonableness of a search and seizure should not be solved solely by reference to general rules or to concepts of authority, agency or privity. *Stoner v. California*, 376 U. S. 483, 488. In the last analysis, the question of the validity of a given search and seizure must be determined by reference to whether that particular search and seizure was reasonable or unreasonable, and that determination must be made on a case-to-case basis in the light of the surrounding facts and circumstances. *United States v. Cook*, 213 F. Supp. 568, 571 (E. D. Tenn. 1962); *United States v. Roberts*, 223 F. Supp. 49, 59 (E. D. Ark. 1963); *Roberts v. United States*, 332 F. 2d 892, 895 (8th Cir. 1964); *Ker v. California*, 374 U. S. 23, 33.

There is a conflict in the decision as to whether in a particular case a husband can assert his constitutional rights to protection from unreasonable search and seizure to prevent the product of a search consented to by

his wife from being used in evidence against him. See *Stein v. United States*, 166 F. 2d 851 (9th Cir. 1948); *United States v. Rykowski*, 267 Fed. 866 (S. D. Ohio, 1920); *State v. Cairo*, 74 R. I. 377; *Dalton v. State*, 230 Ind. 626; *Bellam v. State*, 233 Md. 368; *Commonwealth v. Wright*, 411 Pa. 81; *People v. Palmer*, 31 Ill. 2d 58; Annot. 31 A.L.R. 2d 1091 as supplemented. There being no "fixed formula" for application in specific cases of the constitutional prohibition against unreasonable searches and seizures such conflicts are bound to arise as each case is decided on its own facts and circumstances. *Mapp v. Ohio*, 367 U. S. 643, 653; *Ker v. California*, *supra*, 32, 33. We proceed therefore to an examination in this case 1) of the conduct of the police officers; 2) the control of defendant's wife over these automobiles; 3) the nature of her consent and the manner in which it was obtained; 4) all other material facts and circumstances.

The two automobiles searched by the officers were a 1951 Pontiac two-door sedan and a 1963 Chevrolet convertible, both parked in the driveway of the residence owned by the defendant. Both cars were registered in his name as owner. Sergeant McBain testified that their inspection of these vehicles was "with the permission, and with the keys which were given to us by Mrs. Coolidge," defendant's wife. He testified further that he brought back the keys to Mrs. Coolidge who was in the kitchen and told her what articles they were taking. Inspector Glennon testified that they went out to the cars after asking the permission of defendant's wife to do so and that they took certain items found therein. Mrs. Coolidge testified that the officers asked if they could check the vehicles and "I went to the kitchen and got the keys to the car and gave them the keys, and they went out." She further testified that the officers were out there about fifteen minutes and "one came back with the keys, and then they left." She also testified that she had driven home that afternoon one of the cars which her husband had taken to go to the police station earlier.

Defendant and his wife were married January 15, 1961. At this time, they were living as husband and wife with their child in the home in the driveway of which the two cars searched by the officers were parked. Mrs. Coolidge had the keys to both of these automobiles and it could be found that she was licensed to operate them. The cars were within her view from the kitchen window of her home when the officers were inspecting them. It can be found and ruled on these facts that defendant's wife had equal right and control with her husband over these vehicles, and under the circumstances existing at 11:15 in the evening of February 2, 1964 when they were searched, that she had exclusive physical possession and control over them. *People v. Dominguez*, 144 Cal. App. 2d 63, 65; 47 Am. Jur., Searches and Seizures, s. 72, p. 548, and supp. s. 72, p. 76.

The defendant maintains that his wife's consent was not freely and intelligently given but was obtained by coercion and through misrepresentation. To support this position, he points to, among other facts, the Trial Court's finding that "Mrs. Coolidge, Jr. is an extremely thin, nervous woman at the present time, and that, assuming her condition is not greatly dissimilar today than what it was then, she would have been more nervous than a normal person of her age would have been."

The Trial Court also found, however, that the officers acted courteously in every manner and that "Mrs. Coolidge . . . did not, at least, object," when they proposed to look in the two automobiles. There was testimony from both officers that on this night of February 2, 1964, she was "very cooperative," "very calm" and "rational" and that they had coffee with her. They were dressed in plain clothes, identified themselves as police officers and were invited in by defendant's wife. They told her that her husband would not be home that night because "he was in serious trouble." Although denied by her, the officers testified that they told Mrs. Coolidge that in their investigation of the Mason case they took items "such as guns and so forth" for examination. The Trial Court found that the police had taken various weapons for examination with the consent of the many

people they were questioning. The evidence did not compel a finding, nor did the Trial Court find, that the officers told defendant's wife any falsehoods as was the case in *Commonwealth v. Wright*, 411 Pa. 81 and *United States v. Reckis*, 119 F. Supp. 687. There was no evidence that they pretended to act under the authority of a search warrant as in *Cofer v. United States*, 37 F. 2d 677 (5th Cir. 1930) and *United States v. Rykowski*, 267 Fed. 866 (S. D. Ohio, 1920), cited by the defendant.

The Trial Court properly found that "at that point Mrs. Coolidge fully intended to cooperate with the police in every way . . . to clear her husband of any suspicion." Unlike the situation in *Nelson v. United States*, 208 F. 2d 505 (D.C. Cir. 1953) and *Ray v. United States*, 84 F. 2d 654, 656 (5th Cir. 1936) it would be "in accordance with human experience" (*cf. Nelson v. United States, supra*, 513) for a wife in this frame of mind to freely and intelligently consent to the search of the automobiles and to the taking of items found. This would be especially true in this case where on January 28, 1964, less than a week previously, the defendant in the presence of his wife, in their home, produced guns for examination by two other police officers. On that occasion these officers requested permission from the defendant to look in his cars "and he came outside with us and assisted us in going through the cars, and we examined both cars and opened the trunks, and we opened the glove compartments."

We are of the opinion that the record supports the following conclusions: 1) There was no duress or coercion or stealth or fraud in the conduct of the officers in obtaining the consent of defendant's wife to the search of the two automobiles; 2) her consent was freely and intelligently given; 3) her conduct in giving permission to search these two automobiles parked in the driveway of their home and to which she had the keys was the normal action of a wife. *Holt v. State*, 17 Wis. 2d 468; 4) the conduct of the officers in the search was not ruthless or highhanded as in *Mapp v. Ohio*, 367 U. S. 643 (see *State v. Loudon*, 15 Utah 2d 64), or unfair, un-

reasonable or oppressive. *United States v. Roberts*, 223 F. Supp. 49, 59, *aff'd* 332 F. 2d 892 (8th Cir. 1964).

We hold therefore that under all the facts and circumstances of this case (*Ker v. California*, 374 U. S. 23, 33) the search of these two automobiles was not unreasonable or unlawful. *Stein v. United States*, 166 F. 2d 851 (9th Cir. 1948); *Roberts v. United States*, 332 F. 2d 892 (8th Cir. 1964); *People v. Perroni*, 14 Ill. 2d 581 (*cert. denied* 359 U. S. 980); *People v. Hughes*, 183 Cal. App. 2d 107; *Bellam v. State*, 233 Md. 368; *State v. Shephard*, 124 N. W. 2d 712 (Iowa 1963); *People v. Palmer*, 31 Ill. 2d 58.

III. The defendant also moved to suppress as evidence certain items seized pursuant to four search warrants issued February 19, 1964, on the ground that these warrants were illegally issued and the items unlawfully obtained in deprivation of his constitutional rights.

The Trial Court found that all four search warrants were "issued on February 19, 1964, all at approximately the same time, and all approximately at the same time that the warrant for the arrest was issued for the murder of Pamela Mason."

"These warrants . . . were for search of the premises owned by Mr. Coolidge, Jr., at 312 Seames Drive, a laundermat at 712 Valley Street, and the two automobiles—one a Pontiac and the other a Chevrolet. The search warrants all enumerated the same items to be looked for in each place, and the returns show various things collected from each place. The Court finds that the search warrants were issued by the Attorney General, acting as a justice of the peace, and it is agreed that the Attorney General was in charge of the investigation of the Mason case.

"It is further found that the complaints for the search warrants were drafted by the Attorney General's office, and Chief McGranahan, who signed all of them as complainant, made oath before William Maynard, a justice of the peace. No evidence was offered by either the State or the defendant at this time as to what, if any, evidence was offered in addition to the complaints, prior to the issuance of the warrants.

"The Court finds that the laundermat was searched during the forenoon of February 20th, the house was searched after two P.M. on February 20, 1964, the Pontiac on Friday, February 21st, and the Chevrolet also on February 21st. The Mason warrants were served at eight P.M., on February 19, 1964, to arrest Coolidge on a charge of murder."

The defendant maintains that these warrants are defective for want of a neutral and detached magistrate and because they contain no facts from which probable cause could be found.

The Fourth Amendment of the Federal Constitution provides that "No warrants shall issue, but upon probable cause, supported by oath or affirmation." Article 19th, Part I of the Constitution of New Hampshire provides that "all warrants to search suspected places, or arrest a person for examination or trial in prosecution for criminal matters are contrary to this right [to be secure from all unreasonable searches and seizures] if the cause or foundation of them be not previously supported by oath or affirmation."

The standard for obtaining a search warrant under the Fourth Amendment is enforced against the states through the Fourteenth Amendment. *Aguilar v. Texas*, 378 U. S. 108. To meet constitutional requirements the warrants in this case had to be issued upon probable cause supported by oath and affirmation. *Giordenello v. United States*, 357 U. S. 480, 485. Probable cause exists where the facts and circumstances within the officer's knowledge, and of which he had reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. *Carroll v. United States*, 267 U. S. 132, 162; *Chin Kay v. United States*, 311 F. 2d 317, 320 (9th Cir. 1962). Rule 4 of the Federal Rules of Criminal Procedure provides that for the issuance of a federal warrant for arrest it must appear from the complaint "that there is probable cause to believe" that an offense has been committed by the defendant. Rule 41 regulating the issuance of federal search warrants provides in section (c) that a warrant

shall issue only on affidavit sworn to before the judge or commissioner and only if he "is satisfied that grounds for the application exist or that there is probable cause to believe that they exist."

However state laws relating to arrests and searches have not been obliterated in favor of federal law. *Ker v. California*, 374 U. S. 23, 31. The states are not precluded "from developing workable rules governing arrests, searches and seizures to meet 'the practical demands of effective criminal investigation and law enforcement' in the states provided that those rules do not violate the constitutional proscription of unreasonable searches and seizures and the concomitant command that evidence so seized is inadmissible against one who has standing to complain." *Id.*, 34. Furthermore "the Fourth Amendment's commands, like all constitutional requirements, are practical and not abstract." "Affidavits for search warrants . . . must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion." "Courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner." *United States v. Ventresca*, 85 S. Ct. 741, 746.

RSA 595:1 provides that "A justice or municipal court may issue a warrant for searching any place therein described in the day time, upon complaint, under oath, that it is believed that a person liable to arrest for a crime is concealed there . . . or that any property or thing of any of the following kinds is concealed therein." The statute then enumerates certain types of property not applicable here and then provides "VI. The subject matter of any offense not herein specially mentioned."

Each of the four search warrants in issue was executed by the chief of police of Manchester under oath and addressed to William Maynard, a justice of the peace. Each contained a complaint charging that on the 13th day of January, 1964, the defendant committed an assault upon Pamela Mason with a deadly weapon, a gun, described therein, and also made an assault upon her with a deadly weapon, a knife, causing wounds described therein which resulted in her death. Each war-

rant listed certain objects and things used in the commission of that offense which the complainant had probable cause to believe were kept and concealed in four separate locations specifically and separately described in each warrant: premises at 312 Seames Drive; a 1951 Pontiac vehicle; a 1963 Chevrolet convertible; a laundromat at 712 Valley Street in Manchester.

Neither side offered testimony as to what evidence was presented to the justice before the warrants were issued. The defendant maintains that a proper determination of probable cause could not be made by a magistrate who is the Attorney General of the state, in whose office the complaints were drawn, who took the complainant's oath as justice of the peace, and who is required by virtue of his office to act as attorney for the State in a crime of this type. RSA 7:6; *Wyman v. Danais*, 101 N. H. 487.

We hold that on its face each of these warrants complied with the requirements of RSA 595:1 regulating the issuance of such search warrants in this state. The sworn complaint in each warrant was not based on mere suspicion or belief but rather on an affirmation under oath by the chief of police of Manchester that the defendant had committed the crime of murder. It also contained his sworn statement that he had probable cause to suspect that certain objects used in the commission of this crime were concealed at the named location. In addition thereto the Attorney General, who acted as justice, stated at the hearing on this motion to suppress that there was other oral evidence presented to him when issuing the warrants. In the absence of evidence to the contrary, it could be found thereon that probable cause existed to justify their issuance. *Chin Kay v. United States*, 311 F. 2d 317, 320 (9th Cir. 1962); *Conti v. Morgenthau*, 232 F. Supp. 1004 (S.D. N.Y. 1964); 47 Am. Jur., Seaches and Seizures, s. 22, p. 516.

Furthermore there is no evidence in the record requiring a finding that William Maynard, the Attorney General, could not perform, as a justice of the peace, the functions required of a "justice" by RSA 595:1. Nor is there any evidence in the record requiring a finding

that William Maynard, as justice, could not judge for himself the persuasiveness of the facts relied on to show probable cause or that he did not find probable cause from facts or circumstances presented to him under oath or affirmation by the chief of police. In the absence of such evidence it must be assumed that having issued the warrant the justice had sufficient basis to find probable cause in conformity with the constitutional requirements. *Anderson v. States*, 192 Wis. 352; *Aguilar v. Texas*, 378 U. S. 108.

Consequently on this preliminary motion to suppress, the defendant, as the moving party, had the burden of proving that the evidence was illegally obtained. *Murray v. United States*, 333 F. 2d 409, 411 (10th Cir. 1964); 20 Am. Jur., Evidence, s. 396, p. 357; 79 C.J.S., Searches and Seizures, s. 98, p. 917; 7 Vill. L. Rev. 407, 435. In such a hearing the State was not required to disclose its entire case to prove that probable cause to issue the warrants existed. *United States v. Pardo-Bolland*, 229 F. Supp. 473, 478 (S.D. N.Y. 1964); *State v. Laconia District Court*, 106 N. H. 48. If at the trial the State offers evidence secured under these warrants and it is challenged, then, as stated in its brief, the State will have the burden of presenting evidence to the Trial Justice of facts in existence when the warrants were issued which established to the magistrate the probable cause upon which their issuance was based. *Beck v. Ohio*, 379 U. S. 89; *United States v. Ventresca*, 85 S. Ct. 741.

IV. Lastly the defendant maintains that the items taken under these warrants were evidentiary in nature and not seizable. *Harris v. United States*, 331 U. S. 145. In the absence of statutory restriction it is usually held that any property may be seized which will furnish proof of the crime. 47 Am. Jur., Searches and Seizures, s. 54, p. 534; 4 Wharton's Criminal Procedure, s. 1569. Rule 41 of the Federal Rules of Criminal Procedure lists certain types of property which can be seized under a federal search warrant among which is property "designed or intended for use or which is or has been used as the means of committing a criminal offense." (b) (2).

However our statute (RSA ch. 595) is not as limited in this respect and provides for the seizure of specified kinds of property including: "VI. The subject matter of any offense not herein specially mentioned." RSA 595:1 VI. We hold that the items acquired under the search warrants were the type of property which could be sought and seized by search warrant under the laws of this state. See *State v. Chinn*, 231 Ore. 259, 276-279. If these items are offered in evidence the State, as previously stated, will have the burden of proving that they were described in the warrant or seizable thereunder. See *Johnson v. United States*, 293 F. 2d 539, 540 (D.C. Cir. 1961); *Palmer v. United States*, 203 F. 2d 66, 67 (D.C. Cir. 1953).

The test is always whether the search and seizure under the facts and circumstances of the case was unreasonable. *United States v. Pardo-Bolland*, *supra*; *United States v. Ventresca*, *supra*, 746. These search warrants were issued simultaneously with the issuance of a warrant to arrest the defendant on a charge of murder. When the searches were made the defendant had been arrested for murder. There is nothing in the record to indicate that the arrest or the search warrants were being used merely as pretexts for the purpose of conducting a general exploratory search with the sole aim of finding evidence to connect the defendant with some crime. *Leahy v. United States*, 272 F. 2d 487, 491 (9th Cir. 1959); *United States v. Guido*, 251 F. 2d 1 (7th Cir. 1958). There is no basis in the record to find that these searches were unreasonable or in violation of any constitutional provision.

The procedure followed by the Trial Justice on his motion to suppress of making findings of fact and transferring to this court all questions of law was proper and authorized under RSA 491:17.

Defendant's exceptions are overruled and the case is remanded to the Superior Court for disposition in accordance with this opinion.

Remanded.

All concurred.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

REHEARING ON S & S DENIED

In case of No. 5316, State v. Coolidge, the court upon
April 13, 1965, made the following order:

Motion for rehearing denied.

Concord,
April 13, 1965

By order of the Court:

GEORGE O. SHOVAN
Clerk

MOTION TO RETURN AND SUPPRESS EVIDENCE—
Filed May 13, 1965

NOW COMES counsel for the defendant and states as follows:

1) That without benefit of a search warrant or any other legal authority the State took the defendant's 1951 Pontiac to include various items of personal property therein at or about the time of his arrest, and have continued to hold same without any legal justification.

2) That without benefit of search warrants or other legal justification the State took a Chevrolet automobile belonging to the defendant, to include various items of personal property therein.

3) That the State has returned this vehicle.

WHEREFORE, counsel pray that all items in these vehicles as well as the 1951 Pontiac vehicle itself be returned to the defendant, and all evidence derived or taken therefrom be suppressed and excluded from introduction at the trial.

Order of Court on motion: "May 14, 1965 Motion denied. Subject to right of defendant to have motion acted upon later.

ROBERT F. GRIFFITH
Presiding Justice"

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS

APRIL TERM 1965

No. 3136

No. 3137

THE STATE OF NEW HAMPSHIRE

v

EDWARD H. COOLIDGE, JR.

The above-entitled action came on for trial before the Hon. Robert F. Griffith, Justice, Superior Court, and a jury, at Manchester, N.H. on Monday, May 17, 1965.

APPEARANCES:

FOR THE STATE:

WILLIAM MAYNARD, Esq., Attorney General

ALEXANDER J. KALINSKI, Esq., Asst. Attorney
General

EMILE R. BUSSIÈRE, Esq., County Attorney

PETER S. SMITH, Esq., Attorney General's Office

FOR THE DEFENDANT:

MATTHIAS J. REYNOLDS, Esq.

ROBERT L. CHIESA, Esq.

JOHN A. GRAF, Esq.

STENOGRAPHER:

T. J. McDONOUGH

[Vol. 1, p. 19]

MR. REYNOLDS: . . . We have a motion—motions, to supress certain evidence, but I understand these will be taken up with the Court as the evidence is introduced.

* * * *

[Vol. 1, p. 20]

THE COURT: All right. I'll deny them all, subject to your exception.

. . . .

DIRECT OF MAURICE LECLERC

[Vol. IV, p. 87, p. 88]

MR. BUSSIERE: Now, on February 2nd, would you tell the Court what contact, if any, you made with reference to the defendant in this case, Mr. Coolidge.

MR. LECLERC: The first contact on February 2nd was made at approximately eight A.M., when I called him at home.

Q And at that time, would you tell us what the conversation was? Briefly.

A I called him at home over the phone and identified myself, and he stated, "Is this pertaining to taking the examination?" and I said, "That's right." And I asked him if he could meet me at the station around 1 A.M.—or 1 P.M.; and he said yes he would.

Q And did he meet you at that time?

A He did report to the station. I was out on the road, working on something else at the time he showed up at the station.

Q Until that time, had you—strike that question.

MR. BUSSIERE: As a result of him going to the station, did you then take him to Concord for a Polygraph examination?

MR. LECLERC: I did sir.

Q And who were you with at that time?

A Inspector Doyon.

Q And after the examination, did you—what did you do?

A We returned to the station sir.

Q And did you conduct any further interrogation at that time?

A Yes, we did sir.

Q Up until what time about?

A I'd say almost until three A.M.

[Vol. VI, p. 36, p. 37]

THE COURT: All right. You desired to have your objection and exception noted to the introduction of the items taken from the house. In order to maintain the objection made in your motion to suppress that evidence—which went to the Supreme Court in *State v. Coolidge* and which the Supreme Court, at that time, ruled were admissible—in order that your exception is noted to the admission to that and in order that it may not be considered any waiver of your rights, may I say further, that failure to object, or take an exception to the admission of any evidence that has been ruled upon by the Supreme Court will not be construed as a waiver, as far as this trial is concerned.

* * *

[Vol. VI, p. 96]

MR. REYNOLDS: Objection, Your Honor. May I approach the bench?

THE COURT: Yes. I will assume that your objection is made and save your exception in accordance with the other matter that we've had evidence on, relating to February 2nd—that I have permitted to go in. Do you think you need anything more on the record?

MR. REYNOLDS: Not right here, Your Honor.

THE COURT: All right.

* * *

[Vol. VI, p. 182-p. 227]

(Trial recessed at 10:40 A.M. and resumed at 10:56 A.M. without the jury present.)

FRANCIS P. McGRANAGHAN

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

THE CLERK: State your name and address.

THE WITNESS: Francis P. McGranaghan. I'm Chief of Police in the City of Manchester and I reside at 32 Mammoth Road.

THE COURT: Do you want to sit down Chief, and move that over in front of you. Now, this is a hearing on—a preliminary hearing on the admissibility of certain items that will be offered by the State—taken from the house of the defendant and from the Pontiac automobile of the defendant, under search warrants issued February 20th, 1964.

MR. REYNOLDS: Your Honor, for the record, is the State representing that other items taken from a Chevrolet and a laundromat by search warrants are not to be—are not in the case?

MR. BUSSIERE: May I, Your Honor?

THE COURT: Is that the State's position?

MR. BUSSIERE: Yes sir.

THE COURT: That's what I understood. Now, these warrants, including the one covering the Chevrolet and the laundromat—were—there was a previous hearing on a motion to suppress these items—by the defendant—which went to the Supreme Court. At that hearing the burden of proof was upon the defendant. In this hearing, the burden of proof is upon the State, as I understand the Supreme Court decision on that case. My understanding is—well, you may proceed with your evidence.

MR. BUSSIERE: Yes. Your Honor, may I just correct the fact that you mentioned the warrants were issued on February 20th, whereas I believe they were issued February 19th.

THE COURT: You're correct. February 19th in both cases. The warrant covering the Pontiac was returned February 21 and inventories vacuum cleanings from floor mats, seat cushions and things of that nature—piece of fiber from left front floor mat, with red satin. The one issued on the home returned February 20th and inventoried debris, specimen from cellar, one pair of gents leather work gloves, one light blue T-shirt, one khaki type army raincoat. May I assume in that one, the only thing is debris specimens from the cellar.

MR. BUSSIERE: No, Your Honor. I do not believe we're concerned with the debris from the cellar. I would like to support the State's right to introduce items from

the house—or I shouldn't say the house—I would like to support the State's right to issue—to introduce items taken under the search warrant authorizing a search of the premises at 312 Seams Drive.

THE COURT: Well, do I understand you propose to offer any of the items inventoried?

MR. BUSSIERE: Well, we propose to offer items that were seen, but not taken at the house.

THE COURT: Well, I'm pretty much in the dark as to what you're saying.

MR. BUSSIERE: Well, I think that the—if the Court wants a more specific offer, I will be glad to make it, but it seems to me . . .

THE COURT: Well, I think I would.

MR. REYNOLDS: Shall we make it at the bench?

THE COURT: No.

MR. BUSSIERE: Well, for one point, Your Honor, the State takes a double position with reference to the car that was taken on the night of February 19th. The State claims that the car is an instrumentality of crime and therefore it's seizable under the warrant issued to search the premises at 312 Seames Drive. That's one point.

THE COURT: I see.

MR. BUSSIERE: Secondly, the State also takes—claims the right to introduce into evidence certain magazines and books that were observed in the Defendant's residence on February 19th.

MR. REYNOLDS: Your Honor, I'm going to object to any thing further, because this hearing is limited to the items taken under the search warrant, and enumerated therein.

MR. BUSSIERE: May I add to this before I'm cut off? That the State would claim that right under the search warrants and claim that right also under the arrest warrant.

THE COURT: Well then, is it my understanding that the State claims that the inventory has no significance, or the returns of the search warrants have no significance?

MR. BUSSIÈRE: Are you speaking with reference to the one on the house or the one on the Pontiac?

THE COURT: Either.

MR. BUSSIÈRE: The one on the Pontiac has great significance.

THE COURT: You feel the one on the house has no significance?

MR. BUSSIÈRE: Unless the Court would permit an amendment to it, the answer is no. I think there is law to the effect that it could be amended.

THE COURT: Well, may I say that this case went to the Supreme Court.

MR. BUSSIÈRE: Yes sir.

THE COURT: And this proposition was never mentioned.

MR. BUSSIÈRE: We'll agree—in any prior hearing, until just today.

MR. REYNOLDS: It's the first I've heard of it.

THE COURT: It's the first I've heard of it.

MR. BUSSIÈRE: I think we'll stand on—may I confer with my Brothers a minute?

THE COURT: Yes.

(Conference between prosecution.)

MR. REYNOLDS: Have you got the search warrants, Your Honor?

THE COURT: I've got them both right in front of me.

(Conference between the court and Mr. Reynolds.)

MR. BUSSIÈRE: Your Honor, the State does not claim that the inventory return on the search warrant for the premises is significant. The point Your Honor is making with reference to this case going up to the Supreme Court did not go up on any of these points. There was no occasion to raise this point.

THE COURT: Well, there's a motion to suppress items on the search warrant.

MR. BUSSIÈRE: We want to support those two search warrants.

THE COURT: You're still leaving me completely in the dark. I think it's fair that you state now what you propose to introduce in reliance on the search warrants.

MR. BUSSIERE: We propose to offer on the premises, certain magazines that were observed, but not taken. We propose to introduce the vehicle and we propose to introduce the sweepings and the items listed on the return on the search warrant for the Pontiac automobile.

THE COURT: Well, I'm still a little confused. You said you proposed to introduce certain magazines that were observed and not taken. I assume that at some time they were taken, or you don't propose to introduce them.

MR. BUSSIERE: And well—an observation was made by number and name and a search warrant was issued, within a few days to get these magazines and they were removed. The State was unable to obtain them in specie and therefore the State went to magazine dealers to obtain them, or to obtain copies of the particular issues involved.

THE COURT: I guess I understand your position. That obviously is a separate issue, over and above any other issue. In other words, you're not saying that you propose to introduce any items taken from the house, but you do propose to attempt to introduce copies of certain items that some policeman observed there and went out to some newstand and obtained copies?

MR. BUSSIERE: Or procured them from newsdealers.

THE COURT: Well, I'm not—I'm only going to concern myself then this morning with the evidence on the—let me see if I understand your position. The only items you had in the search warrant on the house is the claim that this gave you a right to keep the car, which you got a separate search warrant for?

MR. BUSSIERE: That's correct.

THE COURT: And to introduce it into evidence.

MR. BUSSIERE: That's correct.

THE COURT: Under the search warrant to search the house . . .

MR. BUSSIERE: And also as an instrumentality of the crime.

THE COURT: And also your search warrant of the house, officers will testify that they saw in the house certain magazines?

MR. BUSSIERE: That's correct, Your Honor.

THE COURT: All right. I understand your position. You may proceed.

MR. REYNOLDS: Well, I don't, Your Honor, so I just take an exception. I'm just not sure what they . . .

THE COURT: I haven't made any ruling. How can you have an exception?

MR. REYNOLDS: This hearing right now is on the search warrant on the Pontiac.

THE COURT: The search warrant on the Pontiac and house, only as it affects the validity of the search warrant. I would not be ruling on the admission or exclusion of any evidence taken, because it might be excludable under another theory.

MR. REYNOLDS: Right.

Q (By Mr. Bussiere) Chief, you've been sworn and stated your name. Will you tell us—calling your attention to February 19th, 1964, whether or not you received a verbal report from Assistant Chief Norman Leavitt with reference to his activities at the University of Rhode Island Criminal Investigation Laboratory?

A I did.

Q And where was this Chief?

A That conference took place in my office at 351 Chestnut Street.

Q And had Asst. Chief Leavitt just returned from the University of Rhode Island?

A Yes sir.

Q And what report did he make to you orally?

A Asst. Chief Leavitt informed me that the ballistic experts that had tested bullets in their laboratory in Rhode Island had informed Asst. Chief Leavitt that the bullet was fired from a Mossberg .22 rifle and that is the rifle that was owned by Edward Coolidge.

Q Now, when you received that information, did you come to any decision? Well, strike that. Chief, I take

it that you, as a procedure—as a matter of fact, you were following the investigation of the Pamela Mason case, were you not?

A Yes, I was.

Q Now, when you received this information from Asst. Chief Leavitt, did you come to any decision as to what you desired to do?

A Yes sir. I realized that was pertinent information and I requested a meeting with the Attorney General that same afternoon.

Q Why did you want the meeting Chief?

A I wanted to discuss with the Attorney General the points of evidence that was gathered against Edward Coolidge.

Q Were arrangements made for you to go to Concord?

A Yes sir.

Q And who did you decide to take with you?

A I decided to take my subordinates with me. That would be Asst. Chief Leavitt, Capt. John Stips and Lt. John Curran of the Manchester Police Department. Also in attendance was Capt. Marchand of the New Hampshire State Police.

Q Now, why did you bring your subordinates with you to Concord?

A Because I wanted to go over the evidence that we had gathered through the investigation, and go over the evidence with the Attorney General and acquaint him with all the facts; and that is the reason why I brought the subordinates with me. In addition to—and to the information of the bullets, there was other pertinent information in evidence.

Q Now Chief, when you got to Concord, physically—what happened? Did you gather around a table some place?

A Yes, we did. We discussed the case in detail and present at the discussion was Attorney General William Maynard, Asst. Attorney General O'Neil and Asst. Attorney General Alex Kalinski. In addition, there was Colonel Regan of the State Police, Capt. John Conte of the State Police and—that's about it.

Q How long did this—how long were you up there Chief?

A Oh, for a minimum of two hours.

Q Now, will you tell the Court, in detail, what evidence you developed yourself, and through your subordinates, against Edward Coolidge, before William Maynard on that occasion?

MR. REYNOLDS: Objection, Your Honor. I think that's two questions. Would he break it down? His personal observation and evidence, as opposed to evidence handed to him through official reports.

THE COURT: Well, my understanding is—is the Chief would have no personal observation. It would all be based on reports, isn't that true, Chief?

THE WITNESS: Yes sir.

Q Now Chief, will you tell us what evidence that you developed through yourself and through the subordinates that you had brought up for that purpose to the Attorney General on that occasion?

MR. REYNOLDS: Well, my objection.

THE COURT: Well, you went right back to the same question, did you not?

MR. BUSSIÈRE: Yes, Your Honor. You just clarified it.

THE COURT: Why did you ask him what evidence he had obtained himself, when he just said he didn't have any?

Q All right. Just tell us what you had developed over there for the Attorney General?

MR. REYNOLDS: I'm going to object to the word developed. What reports of official information was given to him and by whom.

THE COURT: Will you accept that correction?

MR. BUSSIÈRE: Not quite, Your Honor.

THE COURT: All right. I'll sustain the objection.

Q Will you tell us what reports were—what reports you brought to the attention of the Attorney General on that occasion please?

A I brought the following reports to the attention of Attorney General Maynard: these reports were gathered from the investigating officers in the case; that by

Edward Coolidge's own admission, he did have control and owned that 1951 Pontiac on the night of January 13, 1964. That he could never satisfactorily explain his absence from his home at 312 Seames Drive on the night of January 13th, between the hours of 5:00 P.M. and 11:00 P.M. That a neighbor—a Mrs. Mahcu had related that he did not arrive home until 11:00 P.M. and when he did arrive, he immediately went into the bathroom. Now, as I received reports of this particular car—the Pontiac—it was observed on Route 93 north bound, about 9:10 P.M. on January 13th and in close proximity to where the body of Pamela Mason had been subsequently found on January the 21st. In addition, I related to the Attorney General the fact that many of the alibis that Edward Coolidge had presented were proven to be false; and for this reason I—that was the prime reason for our meeting.

Q Well, what new . . .

A To arrive at a decision.

Q Did you inform him of the report that Asst. Chief Leavitt gave you on that afternoon?

A Yes. That was the first report that I had made to the Attorney General and his assistants.

Q And I suppose, for the record, you have to repeat what that was Chief.

A Well, that was the information that the bullet that was recovered from the body of Pamela Mason was proven to be the bullet that was fired from a .22 Mossberg rifle that was owned by Edward Coolidge.

Q Did you relate to the Attorney General who had made those tests?

A Yes, I did. The tests were made by Mr. Grandchamp of Rhode Island and Dr. Harrison of the Rhode Island State College, both ballistic experts, as I understand it.

Q Did you relate to the Attorney General the facts that had been developed in Haverhill in reference to Edward Coolidge's attempt to establish an alibi over there?

A Yes, I did. Oh, I cited one or two incidents as they were related to me by the Inspectors.

Q And as you read their reports?

A Yes sir.

MR. BUSSIÈRE: May I inquire from the Court whether the Court also feels that we should go into more details of the evidence? Of what these characterizations of the evidence are, plus the fact that they were discussed for two hours?

THE COURT: May the Court state for the record the Court would not think of instructing the State how to conduct its case.

MR. BUSSIÈRE: I don't want to take up too much of the Court's time. If I could incorporate some of the previous testimony in the case that was recited before the jury.

THE COURT: I can't say anything differently, I don't think, properly, at this stage.

MR. REYNOLDS: Your Honor, does the record indicate at this point that these are discussions before the issuance of the search warrants?

THE COURT: I'm not certain.

MR. BUSSIÈRE: I'll clear this up, Your Honor.

THE COURT: I think these relate to the issuance of the warrant for arrest. It's my understanding that this is a report made by the Chief to the Attorney General, under our statute, and actually, he was in charge of this case as the final authority.

THE WITNESS: Right sir.

Q Well, as a result of the information that you brought to the attention of the Attorney General on that day, what action did you request be taken?

A I requested that the Attorney General file an arrest warrant for Edward Coolidge and in addition to the arrest warrant, for a search warrant. Four search warrants. One, to cover . . .

Q We only need to cover two of them at this time, Chief.

A Well, one to cover the 1951 Pontiac and the 1963 Chevrolet.

Q What was your purpose—strike that. Was that your purpose in presenting the facts that you previously related in evidence here, to obtain the search warrants and this arrest warrant?

A Yes, because there were certain—certain articles of clothing.

Q Well, I'll go into that in more detail. I understand that I cut you off and you only told us about two cars. Would you tell us the other warrants you wanted then, at that time?

A Would I . . .

Q I think you mentioned that you wanted a search warrant for the '51 Pontiac and the Chevrolet. Did you want some other warrants at that time?

A Yes.

Q What were they?

A The warrants . . .

Q No.

A The reason why I wanted search warrants?

Q No. No. Just a moment. What other—warrants did you want other than the search warrant for the '51 Pontiac and for the Chevrolet automobile owned by the defendant? Did you want some other warrants besides those?

A Yes. I wanted a warrant for the laundromat on Valley Street and a warrant for the home at 312 Seames Drive.

Q Did you also want an arrest warrant for the defendant?

A Yes, I did.

Q And did you indicate to the magistrate, William Maynard, that you desired to be the complainant on such warrants?

A Yes sir.

Q Now, at that point, Chief, what items which were the subject matter—what items which were the subject matter of the crime were sought by your department in relation to the case against Edward Coolidge.

MR. REYNOLDS: Objection, Your Honor.

THE COURT: May I hear the question please? Will you read it back please?

(Previous question read back.)

THE COURT: The objection is sustained.

Q Would you tell us what items were sought by your department in relation to the case against Edward Coolidge?

MR. REYNOLDS: Well, objection.

THE COURT: Sustained.

Q Well, Chief, at this conference, if you want to call it that, did you discuss, or did you—did you discuss what items were sought by your department?

A At this—at this meeting with the Attorney General, I discussed the items that—some of the items that were recovered at the—at the scene of the—at the body; and—among those articles—was a left handed gent's glove and—we were seeking a right hand glove. There were numerous school papers scattered on the snow. I believe there was—there was several articles that Pamela Mason was known to have in her possession when she left her home and certain articles that she was wearing when she left her home that were not on her body when it was recovered. We were particularly interested in—some material—that was missing from Pamela Mason's stretch pants. We were interested in recovering the—the bra, size 34, white bra and . . .

Q Chief, you may refer to some notes, if you have them, with that list of items that you have.

A These were the following notes that were listed in the search warrant. There was knives we were interested in recovering. Any knives. A pink wallet, containing photographs and ID cards of Pamela Mason. Waterproof cosmetic case. As I enumerated, white bra, size 34 B-cup. White nylon panties and rosette. Cardigan sweater, light color. Light—white crochet driver's gloves, leather palm. The left hand—man's pigskin glove, tan, right hand. The front section, rolled cotton jersey, cut off ski pajamas. Small pieces cut off crotch of olive green stretch ski pants. Pencils and ball point pens. Corner of green silk figured scarf and blood. pornographic literature. Workshop debris, including, but not limited to wood shavings, metal shavings, brass filings, hair and fibers.

Q Now Chief, would you tell us what facts were related to the Attorney General indicating that these sought items were in the 1951 Pontiac?

A We . . .

MR. REYNOLDS: Well, I'm going to object, Your Honor.

THE COURT: Let me hear the question again please.

(Previous question read back.)

MR. REYNOLDS: My objection is—are these all facts related by the Chief, or not?

THE COURT: I understand this is all the Chief's testimony of what he related to the Attorney General.

MR. BUSSIÈRE: Or what he developed through his subordinates in the presentation of the information. Again, that's why he brought his subordinates up there—to fill in the details.

THE COURT: I think he may answer. Then you may develop that in cross examination, it appears to me, Brother Reynolds.

Q Would you answer that question Chief?

A Yes. There was a certain amount of debris on the clothing of Pamela Mason, that could have come from the 1951 Pontiac sedan; and that is the reason why I wanted a search warrant of the 1951 Pontiac.

Q Well, what facts did you relate to the Attorney General indicating that the '51 Pontiac probably contained these things?

A From my information gathered from the Inspectors, the debris contained on the clothing of Pamela Mason had contained hair and various other substances; and subsequent vacuuming of the '51 Pontiac revealed . . .

MR. REYNOLDS: Well, objection, Your Honor.

THE COURT: I'm sorry, Chief, we can't use Monday morning quarterbacking on this. It has to be at that time sir.

Q What facts did you develop that made you think that these things would be in the '51 Pontiac Chief? You may refer to some of your previous testimony, if you prefer.

MR. REYNOLDS: I'm going to object to this word. I think the question should be, "What facts did he state."

THE COURT: Right.

A Well, in this type of crime—in this type of crime, that the perpetrator of the crime is prone to . . .

MR. REYNOLDS: I'm going to object, Your Honor.

THE COURT: He may continue.

A Are prone to cut off a garment or piece of a garment from the victim—or take hairs from the body of the victim, just as a future reminder of the experience—the incident. That's part of this type of crime.

MR. REYNOLDS: I'm going to take an exception.

Q Chief, you indicated that you had a report that the '51 Pontiac had been seen on the highway on January 13th of 1964, in a place of close proximity to the place where the body was found. Was that something that you brought to the attention of the Attorney General as indicating to you that the items that you were seeking were probably in the 1951 Pontiac?

MR. REYNOLDS: Objection.

THE COURT: Sustained.

Q Well, Chief, will you tell us what facts were related to the Attorney General, indicating that the sought items were in the 1951 Pontiac?

MR. REYNOLDS: Well . . .

A Would you repeat that question, please?

Q Certainly. What facts did you bring to the Attorney General's attention, indicating that the items that you've listed were probably in a 1951 Pontiac?

A I brought to the attention of the Attorney General that Edward Coolidge, by his own admission, had been driving that '51 Pontiac on the night of January 13th, and that—that he was, in fact, parked, by his own admission, in that particular part of Route 93.

Q Did you bring to his attention the report that you had, placing the car closer to the crime, Chief?

A Yes sir.

Q And the other information that you gave to the Court a little while ago, relative to ballistics and his absence—unexplained by the defendant—from his home, and so forth—did you bring all those things to his atten-

tion to indicate that the items which you were seeking were probably in his vehicle that he used that day?

A Yes sir.

MR. REYNOLDS: Objection.

THE COURT: Sustained.

MR. REYNOLDS: May it be stricken?

THE COURT: It may be stricken.

Q Will you tell us what items of his alibi were brought to his attention, indicating the items you were seeking were probably in his 1951 Pontiac?

A I don't—quite comprehend your question, counselor.

Q Well, all I want you to do, Chief, is to tell us what you made known to the Magistrate, William Maynard, to establish why you wanted to search the Pontiac, to look for the things that you wanted.

A I wanted to search the Pontiac to see if I could find any of these items that I have enumerated.

MR. REYNOLDS: I object, and move that it is not responsive to the question.

THE COURT: It may stand.

MR. REYNOLDS: All right, Your Honor.

Q Now Chief, I think one of your previous answers indicated that you wanted the Attorney General—you wanted to be the complainant to a charge of murder and some search warrants, is that right sir?

A Yes sir.

Q And as a result—did you convey this to the Magistrate?

A Yes, I did.

THE COURT: I didn't hear that. At what point does the Attorney General switch from being the Attorney General and become the Magistrate? Do you claim there's any magic in this phrase?

MR. BUSSIERE: Well, I'll go into that, Your Honor.

Q As you were presenting the items to William Maynard, were you doing that to him as a Magistrate or as an Attorney General?

A I was giving him that information as a Magistrate.

THE COURT: Hummm.

MR. REYNOLDS: Your Honor, I move that that be stricken, sir.

THE COURT: Yes, it may be stricken.

THE WITNESS: I would like to qualify that answer, Your Honor, because I expected him to take my affirmation, or oath.

MR. BUSSIÈRE: May it stand on that, Your Honor?

THE COURT: Well, I—Chief, I'm not concerned with—well, I don't want—well, all right, go ahead.

Q Chief, at some point later, after all this was developed, certain complaints—contained—strike that question. At some point, after all this information was developed in the presence of the Attorney General, were search warrants prepared and an arrest warrant prepared?

A Yes sir.

Q And did you notice whether those complaints that were contained in the search warrants contained a full description of the crime that you were charging Edward Coolidge with?

A Yes sir.

MR. REYNOLDS: Your Honor, I object. I think they speak for themselves, and this is a question of law.

Q Now Chief, did you swear to those complaint?

A Yes sir.

Q Did you swear to each warrant Chief?

A Yes, I did sir.

Q And that was a complaint under—signed by you as complainant?

A Yes sir.

Q And each warrant contained—each application for a search warrant contained a full recital of the complaint?

A Yes sir.

Q Now, when you swore to the complaint contained in the application for search warrants and to the complaint contained in the application for an arrest warrant, would you tell us what you were representing to the Attorney General, under oath?

MR. REYNOLDS: Objection, Your Honor. These speak for themselves—what he said under oath—that he read the complaint.

THE COURT: Do you claim that they don't explain it?

MR. BUSSIERE: I think the Chief will testify that when he swore to those affidavits, all the information was developed.

THE COURT: He may answer, for what it's worth. I'll tell you, quite frankly, I'm—well, he may answer.

MR. REYNOLDS: Subject to my exception.

THE COURT: Your exception.

A I swore that the statements contained therein was the truth, to the best of my ability and knowledge, on the information that was supplied to me and that I honestly believed that Edward Coolidge was the perpetrator of the murder of Pamela Mason.

Q And were you representing, under oath, Chief, the reliability and the veracity of all the information that was developed?

THE COURT: Brother Bussiere, this is your witness. Your questions are constantly leading.

MR. BUSSIERE: Well, I understand, Your Honor.

THE COURT: And this is a leading question that is about to be objected to by the defense and I will sustain the objection. We'll take a short recess at this point.

(Trial recessed at 11:39 A.M. and resumed at 12:23 P.M.)

Q (By Mr. Bussiere) Chief, will you tell us how long you've been connected with the Manchester Police Department?

A 36 Years.

Q Going back 36 years ago, Chief, and through those 36 years, will you tell us what procedure has been followed by the Manchester Police Department in obtaining search warrants.

A The same procedure that was followed in this Coolidge case.

THE COURT: Well . . .

THE WITNESS: And the—pardon me?

THE COURT: Chief, I assume that every search warrant—you don't seek it through the Attorney General?

THE WITNESS: No. No. That is so.

THE COURT: Who would you ordinarily go to?

THE WITNESS: We would ordinarily go to a Justice of the Peace. We would relate the fact to the Justice of the Peace. It wasn't necessary that we never, at any time—for instance, had the Inspectors swear to the contents of the search warrant.

Q Well, did you have them—did you just have them relate the facts to that Magistrate, is that correct sir?

A Yes sir.

Q And after that, an oath would be taken to a complaint charging the offense?

A Yes sir.

Q And that would be contained in the application for the search warrant?

A Yes sir.

MR. BUSSIERE: You may inquire.

CROSS EXAMINATION OF CHIEF McGRANAGHAN

BY MR. REYNOLDS:

Q (By Mr. Reynolds) Chief, do you have any notes, or reports, on this conference in the Attorney General's office on February 19, 1964?

A No, I do not.

Q Well, was your memory refreshed before you came in here by anybody?

A Yes sir.

Q By whom?

A I—well, we discussed—by the—County Attorney.

Q The County Attorney reminded you of the things that you said to the Attorney General?

MR. BUSSIERE: Well, Your Honor, may the record show I was not at that conference.

Q That's what I'm trying to get at, but that's true, isn't it?

A Yes, we went over the points of it.

Q The germane points, you went over them with the County Attorney?

A Yes.

Q But you have no notes at all about—or reports?

A On me, no.

Q Well, do you have any back at the station as to what transpired the afternoon of the 19th?

A Er . . .

Q As far as you were testifying to this morning.

A Yes, I believe there are notes at the station.

Q Notes written by you?

A No, not—it was a general note of who attended the conference and what then transpired. I'm quite sure there's a note to that effect.

Q You think you have one back at the station?

A I'm quite sure that there is.

Q Could I ask you, Chief, if you could get that for us and give it to the County Attorney, or to the Attorney General, in order that I may look at that? Not right this minute, but at some point over the week-end.

A Yes, sir, provided that there is a note. I say I'm morally certain there are.

Q Well, that's all I wanted to check. Chief, in issuing this search warrant, you didn't swear under oath to these facts that you were telling us about this morning?

A Yes.

Q Now, Chief, as I understand it, you swore and read the complaint?

A Yes.

Q But you were not under oath when you related all these other things?

A No. Prior to—not while we were discussing it.

Q Not while you were discussing it during the conference?

A In the conference, no.

Q And the Attorney General was, to your knowledge, in complete charge of that case, wasn't he?

A Yes.

Q And had been for a considerable period?

A The Attorney General would have been in charge of the case—when we . . .

Q Since the body was found?

A Since we gained knowledge of when the body was found—from the 21st.

Q At least from that point?

A Well, prior to that he was informed of the progress of her disappearance.

Q Were you the one who put Capt. Stips in charge of that case?

A Of the search for Pamela Mason, yes.

Q Well, not only that—he said he was Chief Investigative Officer.

A Yes, he is.

Q Are you the one that selected him?

A Yes sir.

Q And he testified that all these reports from the State Troopers and others, used to go to him?

A Yes, sir.

Q And then, did you require that he submit these reports onto—were these reports submitted to the Attorney General's office? Or a representative of him?

A Yes.

Q Chief, the average issuing of a search warrant, as I understand it, is made without going before the Attorney General. We'll take a Manchester robbery, we'll say . . .

A Yes.

Q A policeman comes and you say that he swears this out in front of a Justice of the Peace?

A That's right.

Q Well, he has to swear it out in front of a Justice of the Peace?

A Yes sir.

Q And now, as you know, there are many of us that are J.P.'s. You're a J.P.?

A Yes sir.

Q And can you give me the names, for example, of some of the J.P.'s over the years that have been used?

A In the police department, or . . .

Q Well, by the Manchester Police Department in getting out a search warrant.

A Well—I would—I think that I could tell you—with certainty, that—the Captains, for the most part, are Justices of the Peace.

THE COURT: You mean that another police officer issues these?

THE WITNESS: Yes. Captain Couture and Captain Shea and Captain Loveren are J.P.'s.

THE COURT: Well, let me ask you, Chief, your answer is to the effect that you never go out of the department for the Justice of the Peace?

THE WITNESS: It hasn't been our—policy to go out of the department.

Q Right. Your policy and experience, is to have a fellow police officer take the warrant in the capacity of Justice of the Peace?

A That has been our practice.

MR. REYNOLDS: I have nothing further.

THE WITNESS: In the past.

MR. REYNOLDS: That's all, Chief, except, would you look around for that note, or report about the conference on the 19th?

THE WITNESS: Yes sir.

MR. REYNOLDS: Thank you sir.

MR. BUSSIERE: That's all, Chief, thank you.

THE COURT: Does that complete the evidence that you desired to be offered on this point?

MR. BUSSIERE: Yes, Your Honor.

THE COURT: Defense? That's all for you, Chief. I'm sure you may step down. Thank you.

MR. REYNOLDS: That's all, Chief. Yes, as far as the witness testifying, Your Honor, except we would like to have the Court incorporate the testimony taken in our prior hearings last August and September. I went into some detail with Chief Leavitt, regarding items inventoried as being different—for example—than what they were looking for.

THE COURT: All right. It may be so incorporated. As far as any evidence is concerned, we'll adjourn until 10:00 o'clock Monday morning. I'll see counsel in chambers now.

(Trial recessed at 12:30 P.M. Chambers conference at 12:40 P.M.)

THE COURT: All right. After hearing the evidence of Chief McGranaghan this morning, the Court finds that Chief McGranaghan and the officers most closely connected with the investigation went to the Attorney General's office in Concord, reviewed the entire evidence

up to that point which the police had in their possession; and that the Attorney General, based upon this review of the evidence, which was not under oath, made a decision as Attorney General that the—a warrant should issue for the arrest of Edward Coolidge, Jr., on a charge of first degree murder of Pamela Mason. The Chief related also to the Attorney General that he felt a search warrant should issue for the searching of the house of the defendant, the Pontiac and Chevrolet automobiles and the laundromat which was under the control of the defendant. Was it, at the time?

MR. REYNOLDS: There's no evidence it's his. Didn't he say it was his aunt's laundromat?

THE COURT: And the defendant's aunt's laundromat. Go off the record for a moment.

(Discussion off the record.)

THE COURT: The reasons the items—the evidence—or the review of the evidence by the Chief—the reasons why it was felt that these items would be evidence, useful in the prosecution of the case, were presented to the Attorney General in his capacity as Chief prosecuting officer of the State of New Hampshire. Subsequent to the presenting of this unsworn to testimony, the Attorney General, acting as Justice of the Peace, took the oath of the Chief to the search warrants, which have been offered in evidence and are marked in evidence. The Court would find that the only act that the Attorney General did as—in his capacity as a Justice of the Peace, was in the taking of the oath and that the evidence had been previously presented to him; and reviewed to him in his capacity as Attorney General. The Court would further find that much of this evidence was previously in the possession of the Attorney General. The Court would find further that a neutral and detached Magistrate, having this evidence presented to him, whether under oath or not, by the parties giving it, would have been persuaded that there was probable cause for the arrest of Edward Coolidge for the murder of Pamela Mason; and that there was probable cause for the issuance of the warrants as issued. The Court finds that

the statements of the Chief included a complete review of the evidence and was based upon reliable information, as far as the police investigation was concerned. Go off the record.

(Discussion off the record.)

THE COURT: The search warrants probably should be re-marked for this case.

MR. REYNOLDS: It's easier, because the transcript refers to their different numbers.

THE COURT: The markings—the search warrants and arrest warrant—aren't they referred to in that prior record?

MR. REYNOLDS: That's what I meant, Your Honor.

THE COURT: The incorporation of the evidence taken at the prior hearing on the search warrants, which resulted in the Supreme Court's decision in the case of the State v Edward Coolidge, Jr., which is No. 5316, March 11th, 1965, included the incorporated marking of the search warrants. The Court rules specifically that if the State offers hairs, or debris from the Pontiac car, that it will be admitted as included in the items to be searched for in the search warrant. The Defendant's exception is saved to both of these rulings. The Defendant's exception is saved to all of these rulings.

MR. REYNOLDS: May I please say a few things on the record? I know you don't want me making speeches, but I'd like to make a little speech.

THE COURT: All right.

MR. REYNOLDS: May I ask the Court if, in view of Chief McGranaghan's testimony, the Court feels there is now evidence from which the Court could make a ruling as to whether the Attorney General was neutral and detached at the time he issued the warrant?

THE COURT: I thought that my ruling was that except for the taking of the oath, which was no different than the taking of the oath and the issuance of the warrant, was to me a purely administrative act by a Justice of the Peace. My ruling covered under what circumstances he acted.

MR. REYNOLDS: O.K. The defendant—the reasons for the exceptions that none of these items should be admissible, is under the clear mandate of *Aguilar vs. Texas* and cases cited therein—*Johnson*, *Nathanson*, and *Giordenello vs. U.S.*, because not only are they not under oath, but within the meaning of the *U.S. vs. Ventresca*, that which was under oath is purely conclusionary. The 4th Amendment states that all facts must be under—I believe, the interpretation is—there must be facts under oath. The other point the defendant raises is that this complaint was to a charge of first degree murder and enumerated fifteen items to be searched for in four geographically distinct places.—the house—his two cars and his aunt's laundromat. That there was not testimony by Chief McGranaghan giving any facts to show probable cause for the search of these fifteen items in his automobile. I believe his only testimony was that the girl was missing and found dead on Route 93. The defendant didn't have an alibi for 93 and tried to frame an alibi; and that our client's car was down on Route 93 and I believe the facts—would you—that it was in the north bound lane, not next to the girl's body, but in a different lane. Now, if these are the only facts and I think the State stipulates—again, there isn't enough facts to begin to warrant the search of his automobile for these fifteen different items. Secondly, the items requested to be searched are so vague that it constitutes a general warrant—within the meaning, which is forbidden under our Constitution. I refer the Court to *Stanford vs. Texas*. In other words, there's just a statement to look for hairs and fibers. There's no representation that—or facts presented, that there are hairs or fibers of the decedent in the defendant's car. I further—just mention that I believe that under Article 4 of the Constitution of the United States that—the—and—and I quote—"the Justice in every State shall be bound thereby. Anything in the Constitution or laws of any State to the contrary notwithstanding—" referring to the rulings of the United States Supreme Court; and that if this Court feels, as it did indicate, that the situation and fact presented in *Aguilar*—then I feel that the Court has erred

—in not following Aguilar and the cases cited therein, regardless of what the interpretation is, because it isn't very clear what is on our State's opinion on State vs. Coolidge.

THE COURT: Don't you want to strike out "because it's not very clear"?

MR. REYNOLDS: I don't . . .

MR. GRAF: May I just say one thing? Is it my understanding that all issues—Constitutional issues raised by the presentation of the items, with reference to the search—our objections are saved

THE COURT: Your exceptions are saved to everything.

[Vol. VI, p. 230, l. 3 end of page]

—CHIEF McGRANAGHAN

MR. MAYNARD: I think Your Honor found that I acted in this as impartial and detached, in spite of myself.

THE COURT: I found that an impartial Magistrate would have done the same as you did. I don't think, in all sincerity, that I would expect that you could wear two pairs of shoes. I'm off the record—I'm sorry.

(Remainder of chambers conference—off the record)

[Vol. VII, p. 1,-p. 2]

THE COURT: The Court desires further to find that in view of the fact that these search warrants were issued simultaneously with the murder warrant—that the search warrant did not result in any unreasonable search or seizure, under the facts and circumstances surrounding the issuance of the warrants. The Court further finds that the—that the complaint under oath, by the Chief of police, before the Attorney General, as a Justice of the Peace, complied with 595-1, R.S.A., on the issuance of search warrants and, in effect, summarized the—completely the statements made not under oath by the police Chief and the officers present. That's all I have.

Let me say this—the Court further—no, that's all, I guess.

MR. REYNOLDS: Could I note my exception, again, Your Honor.

THE COURT: Yes, I'll note your exception.

* * *

[Vol. VII, Direct p. 29-p.30] —NORMAN LEAVITT

MR. MAYNARD: . . . This box, which you have given me as containing the sweepings, or vacuumings, from the 1951 Pontiac of the respondent Coolidge—how did these initially come into your possession?

MR. LEAVITT: I vacuumed the Pontiac on the afternoon of February 21st, 1964 and on February 24th, 1964 I took those vacuumings to the University of Rhode Island and turned them over to Dr. Harrison. Then on May 1st, 1964—I'm sorry—1965, I brought those back from the University of Rhode Island—under the direction of the Attorney General.

* * *

[Vol. VII, Direct. p. 37-p.39, L. 20] —NORMAN LEAVITT

(Chambers conference concluded—trial resumed in the court room at 10:56 A.M.)

Q (By Mr. Maynard) Asst. Chief Leavitt, did you participate in the arrest of the respondent Coolidge?

A I did, yes sir.

Q And did you help in formulating the procedure for the arrest?

A I did, yes sir.

Q And will you tell us what procedure was used? Will you tell us what happened incident to the arrest of the respondent Coolidge? What the procedure was and how it was executed.

A In addition to myself, there was Capt. Stips of the Manchester Police Department, Capt. John Marchand and Detective Sergeant William Esson of the State Police. We went to the Coolidge home at 312 Seames Drive and arrived there about 7:40 P.M. on February 19, 1964.

Capt. Stips and I went to the front door and the State Police were instructed to go to the back door. Capt. Stips rang the front door bell. Edward Coolidge opened the front door. We identified ourselves—asked him if we could come in. He invited us in. We then went through the living room to the kitchen—told him that there were State Police at the back door and that we would like to have him let them come in and he did let them come in. We identified ourselves again to Edward Coolidge, in the kitchen, and told him—I told him that I had a warrant for his arrest for murder. He asked to see the warrant and I took the warrant out and gave it to him to read—and he did read it. There was no comment. He only shook his head side to side. He may have murmured "No". at that time, I warned him of his rights and told him that he would have to come with us. He then requested—he was then dressed in shoes and socks, trousers and a T-shirt. He then requested his wife to bring him a shirt and a jacket, which she did. Then he asked to see the warrant again. I took the warrant out and informed him it was the same warrant he had read just a few minutes previously. I handed it to him again and he read the warrant again and at that time, he said, "My rifle never left my home that night." Then he put on his shirt and jacket. I put handcuffs on his wrists and we took him out to the cruiser and brought him to the police station. We booked him for murder at 8:00 P.M.—then took him to the third floor Inspectors Division. We asked him to remove his clothing, which he did, and Capt. Stips and I placed that clothing in plastic bags and provided denim dungaree clothing for him to wear. At 8:05 P.M. he was allowed the use of the telephone to call his attorney and someone sat with him then in a room of the Inspectors Division, until his attorney, William Craig, Jr., arrived there at 8:25 P.M. During the intervening time, between 8:05 and 8:25 P.M., no one interrogated him.

Q Was anything done with respect to his automobiles?

A His automobiles were later removed from the driveway of his home to the police station garage, under the direction of Capt. Stips.

Q And what happened to the custody of the two automobiles?

A The automobiles were placed in the police department garage and locked; and I maintained custody of the keys for those automobiles. On February 21st, I turned the 1963 Chevrolet convertible over to Attorney William Craig, Jr., and obtained a receipt for it; and the 1951 Pontiac is still in our police department garage and I still have the keys for it.

Q And on what date was the Pontiac taken to the police station?

A February 19th, 1964.

Q The same time of the arrest?

A Yes sir.

[Vol. VII, Cross p. 49]

—NORMAN LEAVITT

MR. REYNOLDS: Actually the execution on these search warrants—when did you conduct the search?

A The morning of the 21st—I'm sorry—of the 20th.

Q You can look at your notes, if you want.

A We searched the laundromat the afternoon of the 20th. We searched the Coolidge home and the following day, in the morning we searched the 1963 Chevrolet; and in the afternoon we searched the 1951 Pontiac.

Q As I understand it, no search pursuant to the search warrants, took place the night he was arrested?

A This is correct.

Q And some took place on the 20th and some on the 21st?

A That is correct.

Q When was the Pontiac searched?

A On the afternoon of the 21st?

[Vol. VII, Cross p. 53]

—NORMAN LEAVITT

MR. REYNOLDS: O.K. Now, at 2:00 p.m. on the 21st—you vacuumed the 51 Pontiac?

A Yes sir, between 2:00 and around 4:00 P.M.

[Vol. VIII, Cross p. 92]

—CARROLL DURFEE

MR. REYNOLDS: And these items of pillow, army jacket,—these five from his '51 Pontiac were done—vacuumings—January 4, '65?

MR. DURFEE: That is right.

Q That's almost one year after she was last seen, is that right?

A Yes, this is January 4th of '65.

Q And going on—these—Coolidge jacket, pants and toque was that in January of '65?

A I think those were done sometime in December, but I can't tell the exact date.

Q It would have been either December of '64 or the first of '65 probably?

A Some time like that.

Q And sets 110 and 111 and 112, from the '51 Pontiac, were done April 10, 1965—just a little over a month before this trial?

A Yes.

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[Vol. VIII, Cross p. 140-p. 141]

—CARROLL DURFEE

MR. REYNOLDS: Did you participate in going up—in any vacuuming of the '51 Pontiac? Did you go in the car and vacuum it at any time?

MR. DURFEE: In the removal—in the first cleaning of the car, you mean when that stuff was . . .

Q No. At any time, will you tell me, did you participate in the vacuuming of the '51 Pontiac, and if so, when?

A Yes. Early in April, I believe it was—that—we made a further study, or examination of the car, and did some more vacuum cleaning.

Q Yes. You mean April of this year?

A That is right.

Q So a month before the trial, you were still—you went up and participated in the vacuuming?

A That's right, or I did it myself.

Q All right. You got in the car and vacuumed—all over?

A No.

Q Certain parts?

A That is right.

* * * *

[Vol. X, p. 192]

MR. REYNOLDS: And of course, Your Honor, I renew all motions on the search and seizure and 4th, 5th and 6th Amendment rights, whether it's taking from her house the guns and the questioning at the station, which turned out to be fourteen hours, without . . .

THE COURT: Incidentally, I noticed that our—that the motion with reference to the search warrants has got down to a smaller and smaller number of items. Now we're only concerned with a few small particles, aren't we?

MR. REYNOLDS: Right. I wanted to say the search warrants.

THE COURT: Denied, subject to your exception.

* * * *

[Vol. XII, p. 298-p. 299]

THE COURT: All right. You want to make some motions—or renew all your motions at the close of the State's rebuttal?

MR. REYNOLDS: Yes, I do.

THE COURT: I'll deny them all and note your exception. Now, do you want anything else.

* * * *

[Vol. XII, p. 318]

THE CLERK: Mr. Foreman, have you reached a verdict?

MR. LIVINGSTON: Yes, we have reached a verdict.

THE CLERK: Mr. Foreman, on the indictment charging Edward H. Coolidge, Jr., with the premeditated murder in the first degree of Pamela Mason, how find you the Defendant, Edward H. Coolidge, Jr.?

MR. LIVINGSTON: Guilty.

* * * *

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THE CLERK: Mr. Foreman, on the indictment charging Edward H. Coolidge, Jr., with the kidnap-murder of Pamela Mason, how find you the Defendant, Edward H. Coolidge, Jr.,

MR. LIVINGSTON: Guilty.

* * * *

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

HILLSBOROUGH, SS.

APRIL TERM, 1965

St. 3136, 3137

THE STATE OF NEW HAMPSHIRE

v.

EDWARD H. COOLIDGE, JR.

RESERVED CASE

Indictment charging the defendant with murder in the first degree and kidnap murder in violation of RSA 585:1.

Trial by jury with a view resulted in a verdict of guilty.

Prior to and during the course of the trial the defendant seasonably excepted to the denial of various motions and of his motions to quash the indictment, to dismiss the indictment, to certain rulings of the Court admitting and excluding evidence, to certain rulings of the Court allowing portions of the State's arguments and disallowing portions of the defendant's argument, to certain portions of the Court's charge, and to the failure of the Court to charge as requested, all of which appear more particularly in the transcript.

After verdict, the defendant seasonably excepted to the denial of his motion to set aside the verdict, for judgment notwithstanding the verdict, and for a new trial.

These and other exceptions appear more particularly in the transcript and the appendix.

All questions of law raised by the foregoing exceptions and any exceptions appearing in the transcript and appendix are reserved and transferred. The pleadings, including all motions with the Court's action thereon, the defendant's requests for instructions, and a list of the exhibits transferred are to be printed as an appendix and are reserved and transferred.

ROBERT F. GRIFFITH
Presiding Justice

OPINION IN STATE V. COOLIDGE, 109 N.H. 403

HILLSBOUROUGH,

No. 5514.

STATE

v.

EDWARD H. COOLIDGE, JR.

Argued December 20, 1968.

Supplemental argument June 3, 1969.

Decided June 30, 1969.

On February 26, 1964, the grand jury returned two indictments charging the defendant with the murder of Pamela Mason on January 13, 1964. The first indictment charged murder in the first degree by assault with deadly weapons, consisting of a Mossberg rifle and a knife. RSA 585:1. The second indictment charged the defendant with murder by the same means in the course of committing the crime of kidnaping Pamela Mason, a minor child of the age of fourteen years. RSA 585:1, 20.

Trial was by jury, before *Griffith, J.* The defendant was found guilty of the offenses charged by both indictments. Throughout the proceedings the defendant was represented by assigned counsel. All questions of law presented by his exceptions taken prior to and during the trial, and after the verdicts were reserved and transferred by the Presiding Justice.

Alexander J. Kalinski, special counsel (by brief and orally), for the State.

Matthias J. Reynolds, John A. Graf, Robert L. Chiesa, and Stephen J. Spielman (by brief and orally), for the defendant.

DUNCAN, J. In January 1964, Pamela Mason resided with her parents and younger brother at 51 Donald Street in Manchester. She was a student at West High School, and upon occasion hired out after school hours as a baby sitter. On the afternoon of January 13, 1964

her mother received a telephone call from a man who sought a baby sitter for that evening. Mrs. Mason suggested that he call again after school hours. Pamela arrived home from school at about 4:15 P.M. and at 4:30 P.M. Mrs. Mason left for work at the Holiday Inn. A severe snow storm was then in progress. Before leaving, Mrs. Mason told Pamela of the expected phone call, and cautioned her against leaving the house to baby sit unless a woman should call for her. Shortly thereafter Pamela received a telephone call which her brother answered, but did not overhear. The caller was a man. Pamela then prepared supper for herself and her brother. She left the house at some time between 5:45 and 6:00 P.M. while her brother was assisting the landlord in installing an electrical fuse in the basement. No one saw Pamela leave the driveway. Because of the storm her mother did not return until about 3:00 A.M. on January 14, 1964. Pamela's family and the authorities had no further information concerning her whereabouts until January 21, 1964, when a passing truck driver discovered her lifeless body lying west of the southbound side of interstate highway 93, in Manchester, about six-tenths of a mile north of the Manchester-Londonderry line.

The storm of January 13 continued until midnight. It was a major storm with blizzard conditions and a fall of eleven inches, temperatures between seven and fifteen degrees, and heavy drifting. Temperatures remained below freezing through January 16, 1964 and on the night of January 20, 1964, a rain storm commenced.

An autopsy performed on the evening of January 21, 1964 showed that death resulted from several gunshot and knife wounds, including severance of the jugular vein. There was expert testimony that death had occurred on January 13, 1964 some two to four hours after the victim's last meal.

The evidence connecting the defendant with the crime was wholly circumstantial. He was employed by Cote Brothers Bakery as a route man. Evidence that he was absent from his home at 312 Seames Drive in Manchester

between 5:30 P.M. and 11:15 P.M. on January 13, 1964 was not disputed. The defendant took the stand in his own behalf and denied all knowledge of the crimes charged. He admitted that he had attempted following January 13 to establish an alibi for his whereabouts that night, but asserted that in fact he had driven his Pontiac to Haverhill, Massachusetts to look for a gift for his wife for their wedding anniversary on January 15, 1964.

Various issues arising out of pretrial proceedings in these cases were considered by this court in *State v. Coolidge*, 106 N.H. 186, and *State v. Superior Court*, 106 N.H. 229. In support of the exceptions transferred following the trial the defendant relies both upon the broad proposition that there was insufficient evidence to warrant his conviction, and upon numerous alleged violations of his rights under the State Constitution and the Fourth, Fifth, and Sixth Amendments to the Constitution of the United States, alleged errors relating to the admissibility and exclusion of evidence, and in the denial of various motions made during and after the trial.

The defendant's exception to denial of his motion for directed verdicts of acquittal upon the ground that the evidence did not warrant a finding of guilty beyond a reasonable doubt cuts across other exceptions, and its consideration requires a survey of the evidence. That there was evidence to warrant a finding that the victim was murdered is not a debatable question. It could also reasonably be inferred that kidnaping accompanied the offense.

As previously stated, evidence which pointed to the defendant as the perpetrator of the crime was circumstantial. The State produced evidence that the fatal bullets were fired from the defendant's gun. It was established that he owned more than one knife which could have inflicted the knife wounds, and that one of his knives was lost on the day that the victim disappeared, and found on the following morning near a laundromat which the defendant testified he had visited before going home the night of the 13th. The defendant

conceded that on the night of January 13, 1964 he had been stationed in his Pontiac at the northbound side of Route 93 nearly across from where the victim's body was later found. There was other evidence that his Pontiac was then seen at 9:30 or 9:45 P.M., headed north, approximately across from where the body was found west of the southbound lanes.

There was evidence that comparison of a variety of particles of material found upon the defendant's clothing and in his Pontiac with particles found upon the victim's clothing showed similarities in such a number of instances as to indicate by the law of probabilities that there had been contact between the victim, and the accused or his vehicle. There was evidence that the telephone call which Mrs. Mason received on the afternoon of January 13, 1964 was that of a man whose voice Mrs. Mason later identified as "very similar" to that of the defendant, and that Pamela disappeared shortly after she received another call from a man.

There was evidence that on the day after the disappearance and as late as January 24, the defendant engaged in elaborate attempts to establish an alibi for the night of January 13; and that on January 21, when thawing conditions prevailed and the body was found, but before its actual discovery, he had said that "now" he "really needed an alibi." His explanations of his activities on January 13 and of his presence, stopped on the highway that night, could be found incredible. His acknowledged activities in the week which followed January 13 warranted an inference of guilt. *State v. Thorp*, 86 N.H. 501, 507.

There was evidence that the victim died within two to four hours of her last meal, and expert testimony to warrant a finding that death occurred on January 13. In the absence of evidence suggesting that death occurred outside of Hillsborough County, the discovery of the body within the Manchester limits warranted a finding that the crimes were committed there.

The proof, however, was not wholly free from weaknesses. No one witnessed Pamela's departure from her home, or could say under what circumstances it actually

occurred. The time lapse between her departure at 5:45 or 6:00 P.M. and the discovery of the defendant in his automobile near the scene where the frozen body was later found was approximately three and one-half hours. The evidence showed that when found the body was without undergarments, the blouse had been removed, but was frozen to the victim's back. A jacket, ski pants, socks, and boots were in normal position, but the pants were torn or cut at the crotch, and the zipper was jammed. The victim's books, pocketbook, and scarf were scattered over the area. The body was exsanguinated, but there was no evidence of blood discovered in the defendant's car or upon his clothing and there was little blood on the victim's clothing. There was expert testimony that no anatomical evidence demonstrated that she was killed at the place where she was found.

The limitations of time served to cast doubt upon the likelihood that the State was correct in its theory that the crimes had been committed in a space of three and one-half hours of extremely stormy weather. Further doubts were cast by evidence that the defendant was seen at a Manchester club at about 5:30 P.M. and that between 6:30 and 7:00 P.M. he saw an acquaintance at the Sears-Roebuck store on Elm Street, who was in fact there at that hour.

In the field of ballistics, the credibility of the State's evidence was strained by events which transpired at the trial. Certain of its experts testified that the murder weapon received in evidence had also fired the bullets which had killed Sandra Valade, another minor, in February, 1960. Evidence later produced by the defendant established that he had not acquired the weapon until December 1961 when it was sent to him by mail direct from the manufacturer. Additionally, two experts who had examined both the Balade and Mason bullets testified that the Valade bullets had not been fired from the defendant's Mossberg rifle. One of them called by the defendant testified that the Mason bullets were not so fired. The other declined to give an opinion as to whether the Mason bullets were or were not so fired, for lack of sufficient opportunity to reach a final conclusion.

The evidence concerning matching particles was arguably inconclusive on the issue of probability. Twenty-seven particles from sources connected with the victim were said to match twenty-seven particles from sources related to the defendant; but evidence that each set of matching particles was independently different from other matching sets so that no duplication existed, was less positive. Tested by neutron activation analysis, only four of fourteen particles from both sources were claimed to have a common origin.

Considering the evidence as a whole, and the inferences which could reasonably be drawn, both favorable and unfavorable to the defendant, and granting that a finding of guilt was not compelled, yet we cannot say that the jury which heard and saw the witnesses could not reasonably have been convinced, beyond a reasonable doubt, that the defendant committed the crimes with which he was charged. Even if doubt existed that the murder was committed on January 13, 1964, the conclusion that it was committed at some time thereafter was not foreclosed. The defendant had failed to check in for work on January 14, 1964, there was evidence that he was in Haverhill on that day, and his regular daily work route took him past the spot where the body was found.

We hold that denial of the defendant's motion for acquittal was not error. It follows that the evidence, if properly received, and believed, warranted the verdicts of guilty. They must stand unless errors at the trial or some violation of the defendant's rights require that they be set aside. We therefore turn to consideration of other exceptions argued by the defendant.

Certain constitutional issues presented pertain to the defendant's right to be free from unreasonable searches and seizures, his right to counsel, and his privilege against self-incrimination.

In particular it is argued that events which transpired on February 2, 1964, constituted an invasion of the defendant's rights and privileges. The nature of these events was detailed at length in *State v. Coolidge*, 106 N.H. 186, *supra*, and need not be repeated here. They are now pertinent primarily because of the evidence that

the Mossberg rifle received in evidence at the trial as the murder weapon was procured from the defendant's wife by police officers on that occasion, and because the defendant was questioned by police on that day, without provision of counsel.

The contention that the rifle and articles of clothing were procured by unreasonable search and seizure was considered on the prior transfer, and the issue was decided adversely to the defendant. The defendant's contentions were renewed at the trial. We find no reason to depart from the conclusions previously reached in *State v. Coolidge*, *supra*, which are now further supported by authorities since decided. *Frazier v. Cupp*, — U.S. — (No. 643, decided April 22, 1969); *United States v. Retolaza*, 398 F. 2d 235 (4th Cir., 1968); *United States v. Alloway*, 397 F. 2d 110 (10th Cir., 1968); *Maxwell v. Stephens*, 348 F. 2d 325 (8th Cir., 1965); *Commonwealth v. Rundel*, 432 Pa. 466. See also *United States v. Stone*, 401 F. 2d 32 (7th Cir., 1968); *Jenkins v. State*, (Del.), 230 Atl. 2d 202, 269-270; Note, Third Party Consent, 1967 Wash. U.L. Q. 12, 25-27. Cf. *Bumper v. North Carolina*, 391 U.S. 543.

The defendant's argument with respect to his interrogation by police on February 2 and 3, 1964 cannot be sustained. His objections at the trial were overruled by the Trial Court after full consideration, in the absence of the jury, of the circumstances in which the interrogation occurred. The Court found and ruled that on February 2 and 3 the investigation had not become accusatory within the meaning of the rule announced in *Escobedo v. Illinois*, 378 U.S. 478, and accordingly that the defendant was not entitled to the warnings, or to the assistance of counsel, which the rule of that case would require. *State v. Santos*, 107 N.H. 490. *Miranda v. Arizona*, 384 U.S. 436, decided, after this trial, on June 13, 1966, does not apply to this case. *Frazier v. Cupp*, *supra*; *State v. Santos*, *supra*.

We are satisfied that the findings and rulings of the Trial Court were amply supported by the evidence, which showed that a general investigation of some fifty suspects by innumerable state and city police was continu-

ing up to February 19, 1964, the date of the defendant's arrest for murder following the first reports that ballistic studies showed the fatal bullets to have been fired by the defendant's rifle.

The evidence of the telephone call made by the defendant to Mrs. Mason on February 2, for purposes of voice identification, and Mrs. Mason's testimony concerning it, was properly received since it involved no "testimonial communication" which would violate the defendant's constitutional rights. *Schmerber v. United States*, 384 U.S. 757; *United States v. Wade*, 388 U.S. 218; *Stovall v. Denno*, 388 U.S. 293.

The events of February 2 are further pertinent at this time because the police then obtained articles of the defendant's clothing at his home from which particles were obtained which were received in evidence at the trial. See *United States v. Alloway*, 397 F. 2d 110 (10th Cir. 1968), *supra*. Other particles were likewise procured pursuant to the search warrant of February 19, 1964, the validity of which was upheld on the prior transfer. The warrant provided for the seizure among other things of debris, including wood and metal shavings and filings as well as hairs and fibres. Vacuumings of the defendant's automobile took place on February 21, and 24, 1964 and later, on January 4 and April 10, 1965.

Reconsideration of our prior holding with respect to the validity of the search warrant issued on February 19, as urged by the defendant, leads us to no new conclusion. The circumstances surrounding the issuance of the warrant were fully explored at the trial in the absence of the jury. The Court's findings and rulings that the evidence presented to the magistrate was based upon reliable information and warranted his finding of probable cause, are sustained.

The record shows that the magistrate was fully informed as to "the facts relied upon by the complaining officer to show probable cause," and also as to the underlying circumstances from which it was concluded upon reliable information that the articles for which the warrant was issued might be found in the places to be searched. *Aguilar v. Texas*, 378 U.S. 108, 113, 114;

State v. Coolidge, 106 N.H. 186, *supra*, 197-201; *State v. Titus*, 106 N.H. 219. See *Spinelli v. United States*, — U.S. —, 89 S. Ct. 584.

Acting lawfully to enforce a valid warrant, the police were free to seize evidence other than that specified by the search warrant. *Warden v. Hayden*, 387 U.S. 294; *Frazier v. Cupp*, *supra*; see *Stanley v. Georgia*, 89 S. Ct. 1243, 1251 (concurring opinion). Having properly impounded the defendant's automobile as an instrumentality of the crime (*Palmer v. United States*, 203 F. 2d 66; (D.C. Cir., 1953); *Bryant v. United States*, 252 F. 2d 746 (5th Cir., 1958); *State v. McCoy* (Ore.), 437 P. 2d 734), the investigating officers could properly seize whatever evidence was to be found therein, whether on February 24, 1964 or as late as April 10, 1965. *Frazier v. Cupp*, *supra*; *Cooper v. California*, 386 U.S. 58; *State v. Hutton*, 108 N.H. 279, 289.

We find no violation of the defendant's constitutional rights in events of February 2 and 3, 1964, or in the issuance of the search warrant of February 19, 1964 and the conduct of the officers pursuant thereto.

Another constitutional argument advanced by the defendant is that he was denied the speedy trial guaranteed to him by Art. 14 Pt. I of the Constitution of New Hampshire, and the Sixth Amendment to the Constitution of the United States. *Klopper v. United States*, 386 U.S. 213. While he complains first of postponement of the probable cause hearing following his appearance before a magistrate on February 20, 1964, no constitutional right was thereby violated, since he was indicted by a grand jury six days after his arraignment. The occasion for a probable cause hearing thereupon ceased to exist. *Smith v. O'Brien*, 109 N.H. —. And see, *State v. Myal*, 104 N.H. 188.

It is factually true that the defendant was indicted on February 26, 1964, and brought to trial over a year later, on May 17, 1965. However this does not establish a deprivation of constitutional right. Note, *Speedy Trial*, 20 *Stanford Law Rev.* 476 (1968). The right is one to "orderly expedition and not mere speed." *United States v. Ewell*, 383 U.S. 116, 120. The accused is entitled to

be free from capricious and oppressive delays (*Fleming v. United States*, 378 F. 2d 502 (1st Cir., 1967); *Rien-deau v. Milford Municipal Court*, 104 N.H. 33, 34), but the procedural safeguards afforded him necessitate a deliberate pace. *United States v. Ewell*, *supra*.

Following indictment in this case, the defendant was also indicted on March 26, 1964 on similar charges arising out of the death of Sandra Valade on February 1, 1960. On April 3, 1964, counsel were appointed to represent him. On April 7, 1964, he moved for continuances to the September 1964 term, which were granted. On June 30, 1964, the Court heard his motions for discovery filed on April 13, and 28 and June 19, 1964. In July 1964 he moved to suppress certain evidence. These motions were heard on August 31, September 1, October 6, and October 13, 1964. As a result, findings of fact were made by the Trial Court, and questions of law presented were transferred to this court. They were argued on January 8, 1965, and decided on March 11, 1965. *State v. Coolidge*, 106 N.H. 186.

One of the attorneys appointed to represent the defendant died on January 2, 1965, and new counsel was appointed in his place in the following month. On February 2, 1965, pending the decision of this court, the defendant filed motions to quash and dismiss all indictments for failure to provide a speedy trial. After hearing, these motions were denied on February 20, 1965, when the Trial Court found that certain factors which had contributed to the delay "have also improved the opportunity to have a fair trial." At the same time, the indictments in the Mason case were assigned for trial to commence May 17, 1965.

On March 12, 1965, the Trial Court entered an order for discovery pursuant to a motion filed by the defendant on March 4, 1965. This was in part sustained and in part vacated by this court on April 13, 1965, on the State's petition for a writ of prohibition upon which arguments were heard March 29, 1965. *State v. Superior Court*, 106 N.H. 228. The trial date of May 17, 1965 was unaffected by the latter proceedings, and selection of a jury commenced on the assigned date.

This is not a chronicle of unreasonable or unjustified delays, but rather of diligent and careful consideration of issues having potentially decisive relation to the course of the trial, and of protection of the rights of both the defendant and the State. The issues were disposed of "according to the prevailing proceedings of law," free from purposeful but unreasonable delays. *Riendeau v. Milford Municipal Court*, *supra*. We hold that the motions to dismiss upon the ground of infringement of the right to speedy trial were properly denied. See Standards Relating to Speedy Trial, (approved Draft, 1968) A.B.A. Project on Minimum Standards for Criminal Justice; p. 25 et seq.

A whole series of contentions advanced by the defendant relates to his inability to obtain a disclosure of the State's evidence because of (1) denial of pretrial discovery of notes made by the police in the course of their investigation, (2) the denial of a specification of particulars with respect to the crimes alleged, (3) the receipt in evidence of testimony concerning analyses made by neutron activation, after denial of pretrial discovery as to whether the State intended to offer such evidence, (4) the destruction before trial of original notes of police officers and of original data compiled by the State's expert witnesses and finally (5) the failure to furnish the defendant with a list of State's witnesses in advance of 24 hours before trial. See RSA 604:1.

All of these factors, it is suggested, combined to deprive the defendant of effective assistance by his counsel and of an opportunity to discover evidence in his favor, in violation of his right to a fair trial as guaranteed to him by the Sixth Amendment to the Constitution of the United States.

The first two factors of which the defendant now complains were considered by this court in response to the State's petition for a writ of prohibition filed March 4, 1965. *State v. Superior Court*, 106 N.H. 228. Following that decision, the Trial Court on April 15, 1965 met with the parties and discussed arrangements by which the defendant's expert should have access to the bullet slugs in the State's custody, and the question of whether

any written statements made by the defendant were to be produced by the State for the defendant's inspection. See *State v. Superior Court, supra*, 231. The prosecution disavowed the existence of any recordings of statements made by the defendant and of written statements signed by him. In accordance with his interpretation of the opinion, the Trial Court did not require the State to produce any notes of recollections by police of conversations with the defendant on January 28, February 2 and February 3, 1964 which were later recorded in police reports.

The defendant accordingly complains in substance of what he considers to be the unduly restrictive effect of the previous opinion (*State v. Superior Court, supra*), setting aside the Trial Court's prior order for "a bill of particulars" pursuant to paragraph 8 of the motion for discovery, and denying his right of access to the "work product of the State."

At the trial it appeared in the course of cross-examination of police officers called by the State that in several instances original notes made by the witness with respect to his investigation had been destroyed after they were embodied in formal reports which were available at the trial. In somewhat similar fashion it appeared that certain recorded data developed by the expert witnesses who testified for the State with respect to neutron activation analysis had been destroyed for lack of storage space, after their salient features had been embodied in other recorded data which were produced by the witnesses.

The record, however, falls short of demonstrating that the defendant was thus in any way deprived of evidence calculated to favor his defense. Our consideration of the arguments advanced does not lead us to depart from the views expressed in *State v. Superior Court, supra*, or to come to the conclusion that the defendant has been deprived of evidence, or opportunities to discover evidence, to which he may rightfully be considered to have been entitled. See *State ex rel Regan v. Superior Court*, 102 N.H. 224, 226, 227. So far as the argument relates to the discovery of the State's purpose to utilize evidence

derived from neutron activation analysis, it appears to us that the State was not required in advance of trial to reach a firm conclusion concerning its use of such evidence at the trial, and that the defendant was not prejudicially deprived of an opportunity to defend against such evidence, since he was in a position to call to the stand at the trial his own expert witnesses who testified adversely to the conclusions advanced by the State in reliance upon the data which it introduced in evidence.

The defendant has suggested no authority supporting his argument that the destruction of a policeman's original notes, the substance of which was produced in different form, operated to violate his rights, and we are aware of none. We do not consider that the failure of the expert witnesses to make or preserve records of their pretrial investigations or experiments is any more violative of the rights of the accused. To the extent that such conduct can operate to affect the weight of a witness' testimony, the defendant in this case had the benefit of its exposure on cross-examination.

In connection with the conference of April 15, 1965 between the court and counsel, the defendant advances the argument that the Trial Court then laid down a ruling which was ignored at the trial, and which should have been enforced to preclude receipt of the testimony of the witness Beaudoin, who testified as an expert on ballistics for the State.

In the course of that conference the Court suggested that if Beaudoin, as a state police officer familiar with the procedures of ballistic investigation, should act as custodian of bullets while they were examined by the defendant's expert, he should not later be permitted to testify "as to what the expert did." We do not consider this to have been a ruling by the Court, but rather an observation made early in the conference which ceased to be significant by the time the conference closed in apparently amicable understanding of the "ground rules" to be followed, so far as it was practical to determine them at that time.

Since no objections to the receipt of testimony by the witness Beaudoin were made by the defendant at the

trial upon the ground of any supposed ruling of April 25, 1965, and the circumstances under which the defendant's expert examined the bullets were fully disclosed to the jury, the defendant's contentions on this point merit no further consideration. *State v. White*, 91 N.H. 109, 114.

We find no merit in the defendant's attack on the provisions of RSA 604:1 requiring that "a list of the witnesses to be used . . . be delivered to [the accused] 24 hours before the trial" The defendant sought to obtain such a list by motion filed May 13, or four days before trial. It has been pointed out that the purpose of such a statute is to inform the defendant what witnesses are to be called to testify against him. *State v. Thorp*, 86 N.H. 501, 505; *Logan v. United States*, 144 U.S. 263, 303-308. Where no surprise results, the omission of a witness' name from the list has been held not to preclude calling the witness. *State v. Williford*, 64 Wash. 2d 787.

The defendant attaches significance to the list in this case, because it bore the names of the experts in the field of neutron activation analysis and the defendant was thus certain for the first time that such evidence would be presented. Earlier notification, it is suggested, "would have permitted a greater opportunity to . . . improve cross-examination and question credibility of the experts," and even might have permitted arrangements for the defendant to conduct similar tests by his own experts.

The statute does not preclude the furnishing of the names of expert witnesses in advance of 24 hours before trial, but the defendant suggests no reason why the State should have been required to commit itself to the calling of the experts on neutron activation analysis further in advance of the trial; and we note that in this case after trial commenced on May 17, ten days elapsed before the drawing of the jury and the view were concluded, and the taking of testimony could commence. We find no basis for holding in this case that compliance with the statute violated the defendant's rights.

Many of the defendant's exceptions relate to matters which do not concern constitutional rights. Shortly before trial, the defendant sought an order which would require the State to elect one of the two Mason indictments upon which it would proceed, and would dismiss the other. The motion was properly denied when made, and when later renewed during the trial. The indictments charged separate crimes, and both were supported by evidence which ultimately warranted their submission to the jury. No convincing reason is advanced for requiring the State to abandon one indictment in favor of the other, and no abuse of discretion appears in the Trial Court's order of denial, since both offenses arose out of the same transaction. 5 Wharton's Criminal Procedure (Anderson, 1957) s. 1938; *State v. Nelson*, 103 N.H. 478, 485. There was no risk present that the verdicts of the jury might be ambiguous, cf. *State v. Lincoln*, 49 N.H. 464, 471.

The offense of kidnapping was one which could be found to have been committed in Hillsborough County. The victim's body was discovered in that County, and in the absence of evidence that the homicide was committed elsewhere, an inference that the crime was also committed there was warranted. *Commonwealth v. Knowlton*, 265 Mass. 382. See *State v. Forbes*, 75 N.H. 306, 307. The defendant's contention that there was a violation of Part I, Article 17 of the New Hampshire Constitution for failure to establish that the homicide took place in Hillsborough County cannot be accepted.

Early in the trial the defendant raised an issue with respect to the Attorney General's opening statement. This objection was revived from time to time, as the defendant sought to keep suggestions of sexual implications from the jury. In recounting the findings at the autopsy, the Attorney General stated that the victim's breasts had been bruised and the "genitalia was extended . . . in a manner not inconsistent with sexual intercourse." Following the opening statement, and again on the following day, the defendant moved to strike these assertions or in the alternative that the court order a mandatory examination under the sexual psycho-

path law, RSA 173:3. The motion was denied subject to exception. It was renewed, and again denied, after evidence was received that "tests were inconclusive for recent or fresh sexual assault" and again at the close of the State's evidence, following testimony that the genitalia showed no evidence of abrasion or contusion.

The motion for an examination under RSA ch. 173 was properly denied. The mandatory provision of the chapter requires such an examination when a person is "arrested and charged with one or more of the following sex offenses: . . . enticing a female child" RSA 173:3 I. The offenses of murder and kidnapping of a minor are not included. The offense referred to by the mandatory section is that established by RSA 579:8 which is specifically captioned "Enticing Female Child," and imposes a penalty for enticing or carrying away for the purpose of prostitution or illicit sexual intercourse. Clearly, this was not the offense with which the defendant stood charged.

The motion to strike was properly denied in view of the evidence that the pathologist who performed the autopsy found multiple contusions and bruises of both breasts and was able to insert two fingers in the opening of the vagina, that the victim's body was found without underclothing or blouse, and that her ski pants were cut open in the area of the crotch. The inferences to be drawn from the evidence could reasonably be said to warrant "the allegations and insinuations" which the defendant claims to have operated to deprive him of a fair trial.

In the course of the trial, the State called as an expert witness Dr. Harold C. Harrison, a consultant in microanalysis and director of a university laboratory for scientific investigation. His testimony related to the matching of particles obtained by vacuumings from the victim's clothing with particles similarly obtained from the clothes or automobile of the defendant. The particles were selected because of visual similarity in color, texture, and hue as seen by microscope. Of some forty sets of particles so selected, in each case comparing particles obtained from the victim with particles obtained from the ac-

cused, the witness concluded that the particles matched in each of twenty-seven of the sets were indistinguishable, and similar in all tests performed. Photographs of these sets were exhibited to the jury. In addition to the visual tests, the matching pairs were subjected to comparative refractive index tests. Paper particles were given a Hirshberg stain test. Finally a solubility test was applied. The witness concluded that each matching set was an independent subject from each other matching set, and that by the law of statistical probabilities the victim's clothing, which was the source of one particle in each set, had been in contact with the defendant's clothing or automobile, the sources of the second particle of each set.

We are of the opinion that this evidence was properly received. The fact that the only tests applied to determine that there was no duplication in the 27 matching sets were the tests of color, texture, and hue, did not make the evidence incompetent, but went to its weight. *State v. LaFountain*, 108 N.H. 219, 221. In expressing his conclusion based upon statistical probabilities, the witness relied upon previous studies made by him, indicating that the probability of finding similar particles in sweepings from a series of automobiles was one in ten. Applying this as a standard, he determined that the probability of finding 27 similar particles in sweepings from independent sources would be only one in ten to the 27th power. See *People v. Collins*, 66 Cal. Rptr. 497, 500, footnote 8; *State v. Sneed*, 76 N.M. 349. Hence he concluded that there was a mathematical probability that the similar particles taken from the belongings of the victim and of the accused respectively, had a common origin which established physical contact between them.

While the evidence for the defense tended to show that the tests employed by the State's expert were neither discriminatory nor conclusive, and the expert himself conceded that all twenty-seven sets of particles may not have been wholly independent of each other, these considerations went to the weight of the testimony rather than its admissibility. A similar question arose concerning the significance of the results of tests of particles

made by means of neutron activation analysis. Much time at the trial was devoted to consideration of the admissibility of evidence derived from such tests. To determine this question, the Court in the absence of the jury received expert testimony concerning the nature of the analysis, the methods by which the witnesses conducted it, and the extent to which the results of such processes have gained scientific recognition.

In his opening statement to the jury, the State's Attorney General had outlined at some length the nature of the scientific evidence which the State proposed to offer, including evidence that it had been determined by means of neutron activation analysis that hair found upon the victim's body and clothing corresponded with hair obtained from the defendant's pubic region. The State called as an expert witness C. Michael Hoffman, an employee of the United States Treasury Department, experienced in the examination of physical evidence by neutron activation analysis. The witness gave a general description of the method by which such an analysis is made and tendered his report of the analysis of hairs, and of particles submitted to him by the State in this case. The Trial Court thereupon conducted an extended hearing, out of the presence of the jury, for the purpose of determining the extent to which the results of such analyses have gained scientific recognition and acceptance in order to rule upon admissibility of the proffered evidence. *Frye v. United States*, 293 Fed. 1013, 1014.

The hearing consisted of the testimony of experts called by both parties. It disclosed that the procedures involved were essentially those described in Watkins, *Identification of Substances by Neutron Activation Analysis*, 15 Am. Jur. Proof of Facts, Ann., 115 et seq. (1964). The process, as there stated, "is essentially one whereby the material to be analyzed is first made radioactive . . . so that it will give off or emit radiation in the form of gamma rays. This radioactive sample is then exposed to a scintillation crystal; and every time a gamma ray from the [sample] interacts with the crystal, it emits a flash of light, which is converted into an electrical pulse whose voltage is proportional to the

energy of the gamma rays. An electronic device . . . then sorts the electrical impulses into different energy groups and adds up the pulses in each group. The result is a graph shown on an oscilloscope screen The graph contains information related to the kind and amount of elements in the radioactive sample and can be transcribed immediately or stored on magnetic tape or punched paper tapes for future reference." *Id.* 116-118.

The hearing by the Court without the jury resulted in a ruling excluding the evidence with respect to tests made upon samples of hair, but admitting evidence with respect to comparative tests of the particles vacuumed from clothing of the victim, on the one hand, and from clothing of the defendant and from his car, on the other hand. The Court found that the hair-identification tests had been conducted by the State's experts in reliance upon prior work in which an expert called by the defendant was the "principal worker in the field," that his methods differed materially from those utilized by the experts for the State, and that the evidence on hair-identification offered by the State would not be acceptable to scientists in the field. See *State v. Holt*, 17 Ohio St. 2d — (March 26, 1969).

The Court ruled however that "the evidence with reference to particles stands upon somewhat of a different basis" since unlike the evidence with respect to hair analysis, this evidence was not presented as being "as infallible as that of fingerprints." *Cf. People v. King*, 72 Cal. Repr. 478. The Court found: "Here it is understood there is no attempt at identification by comparison of the particles involved. That all . . . this evidence purports to show is a similarity of the particles based upon a qualitative and somewhat quantitative examination of the particles by neutron activation." Subject to the defendant's exception the evidence with respect to analysis of the particles was presented before the jury.

The testimony upon this score disclosed that some forty samples of particles were visually selected for analysis, based upon similarity of appearance under a microscope. Of the particles so selected and subjected to

nuclear testing, four sets, (each consisting of particles obtained from the victim on the one hand and from the accused on the other), were found to have various chemical elements in common and in such comparable abundance as to warrant testimony by the expert that the particles in each set had a common origin or source, although each set differed in composition from the other.

In support of his exception to receipt of this evidence, the defendant argues first, that neutron activation analysis was not shown to have gained general acceptance in the scientific profession, at least for purposes of matching "unknown particles," secondly, that the "technique actually used" did not follow the technique generally accepted by the profession, and finally, that the evidence of similarity was insufficient to support the witness' conclusion of common origin, or to permit a like inference by the jury.

We are not disposed to hold the evidence inadmissible for the reasons advanced. A close examination of the arguments in support of the defendant's contentions indicates that all are based upon the central theme that in the absence of scientific studies of "known" substances serving as a control to indicate the prerequisites to a conclusion of common origin, the evidence of similarity disclosed by the tests of "unknown" substances received in evidence is not entitled to the probative effect assigned to it by the State's witnesses. In the language of the defendant's brief and argument, his contention is that it was error to receive the results of the analysis "without requiring that the State establish a foundation for conclusions as to the significance of trace elements of particles," by showing the frequency with which they occur in the same relative combinations in the "general population of particles."

The parties are in agreement that in order for the results of scientific tests to be admissible in evidence, the scientific principle involved "must be sufficiently established to have gained general acceptance in the particular field in which it belongs." *Frye v. United States*, 293 Fed. 1013, 1014, *supra*. See *People v. Williams*, 164 Cal. App. 2d Supp. 858; *State v. LaForest*, 106 N.H. 159,

160. The subject is discussed in Conrad, *Modern Trial Evidence* (1956) s. 212, (1966 supp); Richardson, *Modern Scientific Evidence* (1961) ss. 6.3, 6.16; Wigmore, *The Science of Judicial Proof* (3d ed.) (1937) s. 220, p. 450; and 3 Wigmore, *Evidence* (3d ed.) s. 795.

The Trial Court properly applied this principle in excluding the evidence relating to hair identification, in view of the testimony of the defendant's expert, Dr. Robert E. Jervis, a recognized pioneer in this new field. The testimony concerning the analysis of particles however did not purport to attribute to the conclusions reached the same infallibility which the excluded evidence had been claimed to have. The Court could properly find that the tests of particles produced an accurate analysis of the chemical elements which they contained, by means of procedures sufficiently accepted by scientists familiar with this limited field. See *State v. Roberts*, 102 N.H. 414; *State v. Reenstierna*, 101 N.H. 286.

The fact that the defendant's expert testified that he would have subjected the particles to longer periods of radiation, and required a more absolute qualitative testing, went to the weight of the evidence received rather than its admissibility. *State v. LaFountain*, 108 N.H. 219, 221, *supra*.

The probative significance of the results of the analysis was a matter for expert opinion. The State's witness Hoffman had conducted extensive tests upon "unknown" paint samples, and participated in other testing programs. He was of the opinion, as to four different sets of matching substances each of which was found to have common elements in comparable relative abundance, that each set came from a common source, or origin although found in different places. The defendant's expert entertained a contrary view of the significance of the findings. The issue so presented was one which was properly submitted to the jury for decision. *State v. Thorp*, 86 N.H. 501, 507. Essentially, as in the case of Dr. Harrison's matching tests, the issue involved the "mathematical theory of probabilities." See Wigmore, *Evidence*, (3d ed.) s. 414 p. 389; *People v. Collins*, 66 Cal. Repr. 497, 500, *supra*; *State v. Sneed*, 76 N.M. 349, *supra*. We can-

not hold that the testimony of either Hoffman or Harrison was irrelevant or incompetent as a matter of law.

These indictments were tried against the backdrop of the pending Valade indictments. On *voir dire*, the defendant agreed that the Valade case should be mentioned to prospective jurors. In cross-examination of the State's ballistic experts, the defense adduced testimony that in their opinion the Valade bullets, obtained by autopsy in February 1960, resembled test bullets fired from the Mossberg rifle in evidence or that they were in fact fired by that weapon. This examination was permitted over the objection that it might result in mistrial, after a ruling by the Trial Court that it was "clearly understood that the defense assumes the risk of this line of questioning."

After the State had rested, the defendant took the stand, and testified that he first acquired the rifle in evidence by shipment from the Mossberg Company in December 1961. The prosecution then informed the Court that as of the preceding afternoon they had received information indicating that this was so, and that as a result the Valade bullets had been examined at the State's request by a Massachusetts expert named Collins, who had given the opinion that the Valade bullets were not fired by the weapon in evidence. On Saturday, June 19, 1965, the witness Collins was called by the defense, and so testified. At the request of the State, the Mason bullets were delivered to Collins on the afternoon of June 18, 1965 for examination over the week-end. On Monday June 19, State's counsel informed the Court that Collins was unable in the time available to reach a conclusion as to whether or not the Mason bullets were fired by the weapon in evidence, but had suggested that it would be "serious error" to dismiss the indictments in the Mason cases. Collins declined to pursue his investigation of the Mason bullets further, in view of the advanced status of the trial.

In the course of discussion with court and counsel, the prosecution disclosed that certain aspects of Collins' report on the Mason bullets might be considered favorable to the defendant, and other aspects favorable to the State

but that on the whole it was merely "cumulative." No further disclosure was required by the Court, and none was formally sought by the defendant.

The trial resumed and examination of the defendant continued. The State examined him concerning his previous ownership of a handgun of a type which might have fired the Valade bullets, the defendant having previously made the statement that he had owned but lost such a gun before February 1960. After the defendant's evidence was closed, the Court ruled that the State would not be permitted to present evidence contradicting the defendant's testimony concerning handguns, and instructed the jury that it was "ruled out . . . on the ground that it's a collateral issue." The instructions continued: "Since you're only concerned with the rifle in evidence, and it's a collateral issue . . . that's the end of it." The defendant later moved to strike the testimony concerning other guns, and his motion was denied upon the ground that the jury had been instructed to "disregard the evidence as far as a particular issue in this case."

Following the charge to the jury the defendant for the first time suggested that the Court should have instructed the jury that it "must first find that this Mossberg weapon was used to kill her" and that "this knife is not the murder weapon." After the verdicts the defendant moved to set the verdicts aside, alleging among other grounds that his constitutional rights had been violated by the State's failure "to disclose all evidence favorable to the defendant." In support of this motion an affidavit of counsel was filed, relating conversations with the witness Collins on July 14 and August 2, 1965, but stating that Collins had made "no substantial examination of the Mason bullets after attending the trial." The State moved to strike the affidavit, filing with its motion copy of the letter from Collins to defense counsel dated August 3, 1965 and referred to in the affidavit of counsel, in which Collins declined to furnish the defense with an affidavit, and reiterated his inability to "formulate any definite conclusion" with respect to the Mason bullet, or to add to his testimony at the trial. On the

basis of this letter, the affidavit of counsel was ordered stricken from the record. The defendant thereafter moved for leave to take the witness Collins' deposition, which was likewise denied.

The defendant contends that as a result of what occurred at the trial the jury was permitted to speculate that the defendant shot Pamela Mason with some weapon other than the Mossberg rifle in evidence, and that his constitutional rights were thereby violated. The argument appears to disregard the instruction to the jury given at the close of the evidence, that the jury was "only concerned with the rifle in evidence." If the defendant considered this instruction insufficient to overcome the risk of misuse of the evidence regarding other guns, received primarily upon the issue of the defendant's credibility, it was open to him to request additional instructions, which he failed to do. The instruction given was not so plainly inadequate as to result in prejudice to the defendant's rights. See *Frazier v. Cupp*; *supra*. Moreover in submitting the cases to the jury the Court read to them the indictment charging murder with "a Mossberg 22 calibre rifle Palomino model 400 SLLR."

As the State has pointed out, the Valade bullets came to play a part in the trial as a result of the defendant's examination of the plaintiff's experts with respect to them. Confident of his ability to establish that he did not own the Mossberg rifle at the time of the Valade crime, he pursued this course under the ruling that "the defense assumes the risk of this line of questioning." One of these risks was that the State would seek to overcome a possible inference that the defendant was innocent of the crime charged by the Valade indictment. Its effort to present testimony concerning his possession of handguns was properly cut off by the ruling of the Trial Court. *State v. Prevost*, 105 N.H. 90. If any prejudice could have resulted to the defendant from what transpired, it arose from calculated risk which he shouldered early in the trial. Having enjoyed the advantage of his stratagem, he cannot now be relieved of incidental burdens.

In the orders striking the affidavit of defendant's counsel and denying the motion for leave to take the deposition of the witness Collins we perceive no error. Defendant's counsel had full access to the witness during the trial and could have offered any further testimony by him which they considered essential. The record suggests no material evidence withheld by the prosecution. On the contrary the witness Collins' opinion concerning the Valade bullets was voluntarily revealed to the defense by the prosecution. There is nothing in the record to suggest that the witness would have given any opinion concerning the Mason bullets which differed from what he had said at the trial. The affidavit of counsel filed in August, expressly stated that he had "performed no substantial examination of the Mason bullets" since the trial.

We have fully examined and considered at length the contentions advanced by the defendant's voluminous brief and the oral arguments of his diligent counsel. We find no cause to vacate the verdicts of the jury.

Exceptions overruled.

GRIFFITH, J., did not sit; the others concurred.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

GEORGE O. SHO VAN
Clerk of Court and
Reporter of Decisions

CONCORD, N. H.

1969

July 30

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Re: 5514 State v. Coolidge

Gentlemen:

The Court on July 30, 1969 denied the defendant's motion for rehearing and modified the opinion as follows:

Strike out the fourth full paragraph on page 9 of the multilith opinion and add the following sentence at the end of the previous paragraph:

The circumstances under which the defendant's expert examined the bullets were fully disclosed to the jury and the defendant's contentions on this point merit no further consideration.

Very truly yours,

/s/ George O. Shovan

GOS:mnw

cc: Clerk, Hillsborough County Superior Court

SUPREME COURT OF THE UNITED STATES

No. 1318 Misc., October Term, 1969

EDWARD H. COOLIDGE, JR., PETITIONER

v.

NEW HAMPSHIRE

On petition for writ of Certiorari to the Supreme Court of the State of New Hampshire.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1756 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 29, 1970